

**B. In addition to fitting *Sprint*'s third category, *Younger* abstention is warranted in this case because K.Z's adoption proceeding is ongoing, it involves an important state interest, and Plaintiffs have an adequate opportunity to raise their claims in state court.**

[This section omitted.]

**C. There are no exceptional circumstances that would negate the need for abstention in this case.**

[This section omitted.]

In sum, this case clearly falls within *Sprint*'s third category, each *Middlesex* element is satisfied, and there are no exceptional circumstances that would prevent the court from abstaining under *Younger*. For these reasons, Defendants respectfully request that this Court reverse the district court's ruling on Defendants' motion for abstention

## Applicant Details

First Name	Kelly
Last Name	McDonald Garrison
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:kpm98@georgetown.edu">kpm98@georgetown.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>4251 Campbell Ave Apt F-408</div> <div>City</div> <div>Arlington</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22206</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	6037033947

## Applicant Education

BA/BS From	College of the Holy Cross
Date of BA/BS	May 2017
JD/LLB From	Georgetown University Law Center
	<a href="https://www.nalplawschools.org/employer_profile?FormID=961">https://www.nalplawschools.org/employer_profile?FormID=961</a>
Date of JD/LLB	May 23, 2021
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Georgetown Journal of Gender and the Law
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships      **No**  
Post-graduate Judicial Law Clerk      **Yes**

## **Specialized Work Experience**

### **Recommenders**

Dilone, Wendy  
Wendy.Dilone@montgomerycountymd.gov  
Jill, Morrison  
Jill.Morrison@law.georgetown.edu  
Jordan, Emma  
jordan@law.georgetown.edu

### **References**

Wendy Dilone: 240-777-7330;  
wendy.dilone@montgomerycountymd.gov

Jill Morrison: c/o Georgetown University Law Center;  
jill.morrison@georgetown.edu

Emma Jordan: c/o Georgetown University Law Center;  
jordan@georgetown.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Kelly McDonald Garrison  
4251 Campbell Avenue, Apt. F-408  
Arlington, VA 22206

April 5, 2021

The Honorable Elizabeth W. Haynes  
United States District Court for the District of Virginia  
Spottswood W. Robinson III and  
Robert R. Merhige, Jr., Federal Courthouse  
701 East Broad Street  
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year student at the Georgetown University Law Center and a Notes Editor of the *Georgetown Journal of Gender and the Law*. I am writing to apply for a 2022 clerkship in your chambers, following my term as a judicial clerk with the North Carolina Business Court in Charlotte, North Carolina.

I would be an excellent law clerk given my exceptional performance in law school and my ability to work under pressure. I have a 3.73 GPA and experience as a legal intern with the Cato Institute, during which I conducted legal research and worked with my supervisor as he drafted several amicus briefs to the Supreme Court. I have also worked as a research assistant several times, including this past summer, after the pandemic delayed my internship with the Montgomery County State's Attorney's office. These roles have given me the chance to work closely with legal professionals and to do extensive legal research.

I am spending my final semester in law school assisting attorneys defending individuals who are currently on death row, which reflects my commitment to a career in public service.

I have enclosed my transcripts, writing sample, résumé, and recommendations for your review. Georgetown will submit my recommendations under separate cover. Please note that while Georgetown University Law Center does not rank, my current GPA places me roughly within the top 10% of my class.

Please let me know if I can provide any additional information. I can be reached at 603-703-3947 and kpm98@georgetown.edu. Thank you very much for your consideration.

Respectfully,

Kelly McDonald Garrison

## KELLY McDONALD GARRISON

4251 Campbell Avenue Apt. F-408, Arlington, VA 22206 • (603) 703-3947 • kpm98@law.georgetown.edu

### EDUCATION

#### GEORGETOWN UNIVERSITY LAW CENTER

##### Juris Doctor

GPA: 3.73

Activities: **Notes Editor**, *Georgetown Journal of Gender and the Law*

Washington, D.C.

Expected May 2021

#### GEORGE MASON UNIVERSITY LAW SCHOOL

##### First-year Juris Doctor coursework completed

GPA: 3.89

Honors: Member of the Legal Honors Society (Phi Delta Phi)

Activities: Mason Law Disability Rights Initiative  
Business Law Society

Arlington, Virginia

2018 - 2019

#### COLLEGE OF THE HOLY CROSS

##### Bachelor of Arts, *cum laude*, in Political Science

GPA: 3.62

Honors: Political Science Honor Society, Washington, D.C. Honors Semester Program

Leadership: Head of the Holy Cross Writing Center (3 years), Head of the Holy Cross Yearbook (2 Years)

Publications: Holy Cross Literary Journal "The Purple" (2014, 2015, 2016, 2017)

Worcester, MA

May 2017

### EXPERIENCE

#### North Carolina Business Court (Confirmed Position)

##### Judicial Clerk for Judge Adam Conrad

Charlotte, North Carolina

Aug. 2021 - Aug. 2022 (Approximate)

#### Death Penalty Litigation Practicum (Georgetown University Law Center)

##### Student

Washington, D.C.

Jan. 2021 - May 2021

- Assisting a Texas attorney on an active death row case, including extensive legal research

#### Montgomery County State's Attorney's Office Summer Internship Delayed until Fall 2020 due to COVID-19 (Remote)

- Interviewed witnesses and crime victims, attended trials
- Wrote case summaries and made recommendations

September 2020 - December 2020

#### Georgetown University Law Center

##### Research Assistant for Professor Emma Jordan

May 2020 - Aug. 2020

- Conducted research related to economic changes in the D.C. area caused by the COVID-19 pandemic

#### The Cato Institute

##### Legal Intern

Washington, D.C.

Sep. 2019 - Dec. 2019

- Assisted with Research for Supreme Court briefs
- Conducted policy-based legal research for think tank

#### Robert Half

##### Account Executive, Technology Services

Tyson's Corner, Virginia

Oct. 2017 - Aug. 2018

- Coordinated technology implementation for dozens of clients
- Interfaced with clients to assess technical hiring needs

### LANGUAGES, PUBLICATIONS, & INTERESTS

- Seven years of Latin language education (6<sup>th</sup>-12<sup>th</sup> grade)
- Cooking, dog ownership, reading (especially Jane Austen), swimming, diving, and British culture.



This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Kelly P. Garrison  
GUID: 832916325

Course Level: Juris Doctor

**Transfer Credit:**

George Mason University  
School Total: 30.00

**Entering Program:**

Georgetown University Law Center  
Juris Doctor  
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2019 -----							
LAWJ	004	05	Constitutional Law I: The Federal System	3.00	A	12.00	
			Nicholas Rosenkranz				
LAWJ	121	07	Corporations	4.00	A	16.00	
			Charles Davidow				
LAWJ	876	08	International Business Transactions	4.00	A-	14.68	
			Don De Amicis				
			<b>EHrs QHrs QPts GPA</b>				
Current			11.00 11.00 42.68 3.88				
Cumulative			41.00 11.00 42.68 3.88				
----- Spring 2020 -----							
LAWJ	1531	05	Advanced Legal Writing: Practical Skills from Retail Industry Examples	2.00	P	0.00	
			Emily Bolles				
LAWJ	1534	05	Advanced Topics in Corporate Law: Control and Its Implications	1.00	P	0.00	
			J. Travis Laster				
LAWJ	165	05	Evidence	4.00	P	0.00	
			Paul Rothstein				
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties	4.00	P	0.00	
			Susan Bloch				
LAWJ	3009	09	Ethics in International Arbitration	1.00	P	0.00	
			Mark Kantor				
LAWJ	361	07	Professional Responsibility	2.00	P	0.00	
			M. Jesse Carlson				
Mandatory P/F for Spring 2020 due to COVID19							
			<b>EHrs QHrs QPts GPA</b>				
Current			14.00 0.00 0.00 0.00				
Annual			25.00 11.00 42.68 3.88				
Cumulative			55.00 11.00 42.68 3.88				

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2020 -----							
LAWJ	1038	08	Religion and the Work of a Lawyer Seminar	2.00	A-	7.34	
			Amelia Uelmen				
LAWJ	128	08	Criminal Procedure	2.00	B	6.00	
			Brent Newton				
LAWJ	1468	05	Business and Financial Basics for Lawyers	2.00	P	0.00	
			Andrew Blair-Stanek				
LAWJ	1491	104	~Seminar	1.00	A	4.00	
			Mary Novak				
LAWJ	1491	106	~Fieldwork 3cr	3.00	P	0.00	
			Mary Novak				
LAWJ	1491	21	Externship I Seminar (J.D. Externship Program)		NG		
			Mary Novak				
LAWJ	1722	05	Lawyers as Leaders	1.00	P	0.00	
			William Treanor				
LAWJ	195	05	Election Law: Voting, Campaigning and the Law	3.00	B+	9.99	
			Paul Smith				
LAWJ	3083	13	The First 1000 Days: Global Health Law & Policy from Gestation to Age Two	3.00	A	12.00	
			Sheila Fleischhacker				
			<b>EHrs QHrs QPts GPA</b>				
Current			17.00 11.00 39.33 3.58				
Cumulative			72.00 22.00 82.01 3.73				
----- Spring 2021 -----							
In Progress:							
LAWJ	1349	08	Administrative Law	3.00	In Progress		
LAWJ	1708	05	Death Penalty Litigation (Project-Based Practicum)	4.00	In Progress		
LAWJ	193	09	Financial Regulation and Financial Crisis	2.00	In Progress		
LAWJ	317	97	Negotiations Seminar	3.00	In Progress		
LAWJ	939	08	Immunity Under International Law	2.00	In Progress		
----- Transcript Totals -----							
			<b>EHrs QHrs QPts GPA</b>				
Current			17.00 11.00 39.33 3.58				
Annual			72.00 22.00 82.01 3.73				
Cumulative			72.00 22.00 82.01 3.73				
----- End of Juris Doctor Record -----							

**Kelly McDonald Garrison**  
**George Mason University School of Law**  
**Cumulative GPA: 3.89**

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Economics for Lawyers	Stevenson	A	3	
Property	Mossoff	A	4	
LRWA	FitzGerald	B+	2	
Torts	Krauss	A+	4	
Contracts	Pi	A+	2	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Statutory Interpretation	Lund	A	2	
Criminal Law	Lerner	A-	3	
Civil Procedure	Newman	A	4	
Contracts	Pi	A-	3	
LRWA	FitzGerald	B+	3	



**Kelly McDonald Garrison**  
**College of the Holy Cross**  
**Cumulative GPA: 3.62**

**Fall 2013**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Ciphers and Heroes	Frechette	B+	1	
Calculus I	Gardner-Spencer	C-	1	
Microeconomics	Nathan	C+	1	

Mononucleosis during first semester of college

**Spring 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Philosophy	Stempsey	B	1	
Composition Theory and Pedagogy	Hays	A-	1	
Principles of American Government	Burnett	A	1	
Privacy in the Internet Age	Frechette	B+	1	

Dean's List

**Fall 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contemporary Christian Morality	Roach	A	1	
Intro to Int'l Relations	Kocs	A	1	
Intro to Political Philosophy	Bissex	A	1	
Anthropological Perspective	Jarrin	A	1	

Dean's List

**Spring 2015**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Making the American Museum	Welu	A-	1	
Intro to the Politics of East Asia	Kocs	A-	1	
Intro to Comparative Politics	Langhor	A-	1	
Creative Writing I	Collins	A	1	

Dean's List

**Fall 2015**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American Presidency	Baylor	A	1	
Asian-American Literature	Santos	A	1	
Chemistry in Society	Mills	A-	1	
Catholic Political Theory	Berry	A	1	

Dean's List

### Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Seminar	Murray	A	1	
Internship	Galante	B+	1.5	
Thesis	Schaefer	B+		
Thesis	DeAngelis	B+	1.5	

I was participating in a school Semester Away in Washington, D.C. at this time.

### Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Ballet I/II	Lee	A-		
Presidential Selection	Brand	A-		
Elementary Italian I	Chierichini	A	1.25	
Constitutional Law I	Hindman	A	1	

Dean's List

### Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Elementary Italian II	Chierichini	A	1.25	
Feminist Theory	Schaffer	A-	1	
Creative Writing II	Hager Cohen	A-	1	
Constitutional Law II	Hindman	A	1	

Dean's List

Graduated cum laude

### Grading System Description

Each class at Holy Cross is designated as "one class credit," or potentially 1.25 or 1.5 in special situations, such as a class with a practicum, as opposed to being designated by credit hour.



STATE'S ATTORNEY  
JOHN J. MCCARTHY

## State's Attorney for Montgomery County

50 Maryland Avenue  
Rockville, Maryland 20850

240-777-7300  
FAX 240-777-7413  
WWW.MONTGOMERYCOUNTYMD.GOV/SAO

DEPUTY STATE'S ATTORNEYS  
PETER A. FEENEY  
RYAN S. WECHSLER

April 9, 2021

To Whom It May Concern:

**RE: Recommendation Letter for Kelly Garrison**

It is my pleasure to recommend Kelly Garrison for a law clerkship position. Kelly participated in our Internship Program at the Montgomery County State's Attorney's Office during the Fall Semester of 2020. Our office performs criminal prosecution of defendants accused of criminal activity in Montgomery County, Maryland. The goal of the State's Attorney's Office is to serve the public interest through fair and honest administration of justice and to protect the interests of the victims of crime on both the misdemeanor and felony levels.

Kelly was an invaluable asset to the District Court Unit for the Montgomery County State's Attorney's Office. For over twenty years, this program has been highly disposed to mentoring students and providing an exceptional educational experience. Student interns, with supervision from the attorneys and legal assistants, handle approximately 40 percent of the cases that come into the District Court Screening Unit.

The District Court Screening Unit, which was the unit where Kelly was assigned to, is a "virtual reality" prosecutor experience. However, due to the COVID-19 Pandemic, several changes were made for the safety of our students and staff members. Nonetheless, Kelly was able to work well under these circumstances and adapt to working in a remote setting.

During Kelly's virtual internship, she prepared a caseload of complex cases assigned to her. Two of Kelly's cases consisted of over 150,000 pages of evidence which Kelly was able to review and began the organization process of the evidence, of value. Kelly was responsible for interviewing all parties involved in the incident(s), including the victim, witnesses, and police officers. Following the screening and investigative process, Kelly was required to generate a legal memo stating how the facts of the case(s) met the elements of the crimes charged. Kelly's written work demonstrated strong abilities and her facts supported her assigned caseload. These are skills well suited for and required as a law clerk. Kelly was able to understand the importance of written memorandums for her cases and was open to receiving constructive criticism.

Throughout the course of the semester, Kelly successfully learned and demonstrated progress in her abilities to interview victims and witnesses in her cases. Kelly was able to discern what information was needed from victims and witnesses. She demonstrated confidence and was comfortable with tasks assigned to her and was diligent in contacting possible witnesses and victims and requesting needed evidence. Her communications were mainly via telephone and e-mail and both were conducted professionally.

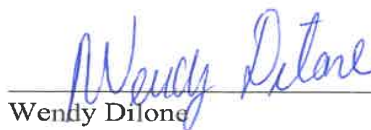
In addition to screening cases, Kelly observed court and assisted in trial preparations. She was able to work independently and always eager to learn more and frequently asked questions. Kelly went above and beyond what was asked of her on her cases and frequently volunteered to take on additional tasks. One research project required Kelly to research and create an outline for the District Court attorneys regarding the laws of confession in Maryland.

In our virtual meetings, Kelly presented her cases and assessments well. She was also able to quickly and accurately identify legal issues. She was proficient at analyzing facts and readily applied the relevant law to those facts. These skills set assisted Kelly in formulating appropriate questions to conduct her interviews and write clear and concise case summaries. Additionally, these skills are at the core of her success and are critical for future success in the law.

Kelly met deadlines and always notified the assigned Assistant State Attorney and me if she needed more time on a case to receive evidence or other pertinent information that would be beneficial. She adhered to her schedule and gave ample notice to make changes to her schedule when needed. Kelly also demonstrated exceptional organizational and multi-tasking skills.

I highly recommend Kelly Garrison for a law clerk position with your chambers and know she will be an outstanding addition to your office.

Sincerely,



Wendy Dilone  
Assistant Coordinator of Law School Interns  
& Legal Assistant  
Montgomery County State's Attorneys Office

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

April 12, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am Jill Morrison, the Director of the Women's Law & Public Policy Fellowship and a Visiting Professor of Law at Georgetown University Law Center. I am writing in support of the clerkship application of Kelly McDonald Garrison. I had the pleasure of having Kelly in my class, the First 1,000 Days: Global Health Law & Policy from Gestation to Age Two. My class approaches this public health concept with a Reproductive Justice lens. The goal is to interrogate much of the health information, laws and policies directed at families and identify how social and economic supports fail to create an environment that uplifts and supports pregnancy and parenting.

Kelly took the course as her J.D. Upper Class Writing Requirement. I worked with her to develop a publishable piece of scholarly writing. Kelly proposed the novel idea of instituting an APGAR score to reduce maternal mortality disparities. The APGAR test is a quick evaluation of newborns to determine their health status. Kelly's paper explored the history of the APGAR score, critiqued the medical system's focus on newborns (often to the detriment of mothers), and identified methods to implement a maternal APGAR score through federal and state mechanisms.

Kelly was an absolute delight to work with on her paper, and I believe our process sheds some insight on how she would serve as a judicial clerk. As compared to other students in the class, Kelly had little experience applying the Reproductive Justice framework, and no background in public health. Kelly exhibited a curiosity about these new subjects and joy at the discoveries she was making that would shape her terrific idea into workable recommendations. I could point her in the general direction on a particular issue, and count on her to do the deep dive. The result was either a well-researched analysis of the point of law, or a precise question for our further discussion.

Kelly was not only responsive to feedback, but also took the initiative to think about how her paper could be improved with each draft. I was also deeply impressed with her ability to carefully consider racial justice in exploring the issue of maternal health disparities. After careful consideration and discussion, we agreed that her paper would advocate for the development of a different maternal APGAR score for Black mothers, in an attempt to address system racism and discrimination in the provision of maternity care.

I believe Kelly would bring this commitment to excellence and sound judgement to her service as a judicial clerk. I'd be happy to answer any further questions you have about her candidacy. I can be reached at 202-328-3292.

Warmly,

Jill C. Morrison

Morrison Jill - [Jill.Morrison@law.georgetown.edu](mailto:Jill.Morrison@law.georgetown.edu)

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

April 22, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

Kelly McDonald Garrison is independent, creative, and brilliant. With minimal guidance from me, she designed the framework for a brand-new project, The Georgetown Financial Justice Project. The project required her to construct a survey instrument to determine the fines and fees policies of 3 major jurisdictions during the pandemic. I wanted to find out if the fines and fee policies of some cities continued to impose financial burdens on its most vulnerable citizens during the economic and health crisis of the COVID pandemic.

Kelly's research was meticulous. Her writing was clear and comprehensive. She personally interviewed administrators and selected individuals affected by the fines and fee policies of the three local jurisdictions. She discovered, for example, that the District of Columbia had altered its Parking and Service Policies in March 2020. Parking meters are still operational and city employees are still issuing tickets. However, the city has suspended booting and towing vehicles; residential street sweeping; rush hour parking ticketing and ticketing for expired license plate inspection stickers.

Kelly went beyond making comparisons of the obvious policies. Her research identified new areas for my research. She discovered that the prison fees for telephone calls, stamps, stationery, candies, cigarettes, and snacks contained commissary price markups as high as 40% for necessities like soap, or toothpaste. These revenue from these markups were captured by prison guards as a "commission" for providing these products. I was surprised at this finding. Kelly was able to show that lack of access to soap during the pandemic created health risks in these congregate settings.

Kelly was a determined investigator. She happened upon a truly offensive practice. She discovered that private parking contractors were issuing "tickets" for cars parked near their garages, but on public streets. This required her to verify the factual basis for the claim of one victim of this practice. She was persistent in determining the facts and the legal sanctions available for these practices.

Kelly worked with national Financial Justice leaders in the award-winning programs in San Francisco and New York to place her research in historical context. At the end of the summer program, she produced publishable work that will be included in an article I have in progress.

Kelly would be an ideal judicial clerk because she is a smart, self-directed, and creative researcher. Finally, she is personable, and extremely easy to work with.

Please feel free to contact me if you need more information.

Sincerely,

Emma Coleman Jordan  
J. Crilley Kelly and Terry Curtin Kelly  
Professor of Business Law and Economic Justice

Emma Jordan - [jordan@law.georgetown.edu](mailto:jordan@law.georgetown.edu)

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MARTIAN MANUFACTURING, INC.,  
An Illinois Corporation,

Plaintiff,

v.

BULLSEYE, INC., A Delaware Corporation,

Defendant.

Case No. 1:20-cv-000023

**DEFENDANT BULLSEYE, INC.'S MOTION TO DISMISS  
PLAINTIFF MARTIAN MANUFACTURING'S BREACH OF CONTRACT CLAIM**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Bullseye, Inc. ("Defendant") moves to dismiss Plaintiff Martian Manufacturing's ("Plaintiff") complaint for failure to state a claim upon which relief can be granted.

**PRELIMINARY STATEMENT**

The plaintiff in this case has failed to properly allege breach of contract because it cannot show that Defendant violated any part of the parties' General Supply Agreement. Alternatively, Plaintiff materially breached the contract first, justifying Defendant's suspension of performance.

Plaintiff is Defendant's supplier, and the two had a long-standing General Supply Agreement through which Plaintiff manufactured branded products for Defendant. The General Supply Agreement allowed the Defendant to halt purchases at any time. Nevertheless, Plaintiff claims that Defendant's decision not to make purchase orders after November 2019 damaged

Plaintiff. Plaintiff now sues for such damages but does not state which provisions of the contract Defendant supposedly violated in its complaint. That is because Defendant did not violate the contract.

The contract allowed the Defendant to stop purchasing at any time, and in addition, Plaintiff materially breached the contract and rendered it voidable. Plaintiff's material breach, specifically of ¶ 3.3 of the Agreement, occurred in Fall 2019. This decision permitted Defendant to suspend its performance in any event. The General Supply Agreement ¶ 3.3 stated that Plaintiff would not modify the manufacturing or quality of the relevant products without prior written authorization by Defendant. Plaintiff nevertheless changed both its manufacturing processes and the quality of the given products without notifying Defendant. This constituted a material breach of the contract because it represented Plaintiff's failure to fulfill a substantial contractual obligation, causing Defendant to justifiably suspend its performance.

Plaintiff now attempts to sue Defendant for a breach of contract despite failing to demonstrate any breach by the Defendant and despite breaching the contract first and thus justifying suspension of Defendant's performance. The Plaintiff does not allege that it suffered harm for which relief can be granted here. Therefore, the claim must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

### **BACKGROUND**

Defendant is a large, nation-wide retailer who contracted with Plaintiff to supply Bullseye's stores with branded products under its generic store brand, "Bingo." Bingo is Defendant's private brand, and Defendant contracts with manufacturers to produce goods for this brand, but Defendant's labelling is placed on all "Bingo" products. *See* Compl. Attachment A. The products produced for Bingo include home goods such as bathmats, duvet covers, sheets,



and towels. *See id.* The General Supply Agreement did not guarantee orders or state that the contract was exclusive.

Starting in November 2019, the quality of Plaintiff's products deteriorated substantially. The textiles were different colors and were less visually pleasing than before, the thread counts were lower, and the edges were uneven.

Plaintiff concedes that, in violation of the parties' contract, it changed its manufacturing methods without prior written approval from Defendant, which caused the quality of the relevant products to deteriorate. *See* Pl.'s Compl. at ¶ 11. Defendant tried to give Plaintiff a chance to fix its errors and paid full price for a defective order that Defendant received in 2019. *See id.* However, when Defendant received a second defective order in the first week of December 2019, Defendant informed Plaintiff that the new products were defective and did not meet their contracted specifications. *See id.*

Even though Defendant complained about the deficiencies and gave Plaintiff a chance to remedy them, Plaintiff refused to improve the quality of the products and come into compliance with the contract. *See id.* at ¶ 12. Plaintiff also admitted that it had made changes to the products without notifying Defendant. *See id.* at ¶ 11. Because Plaintiff altered products that were to be sold under Defendant's name without permission or warning, and then refused to stop the alterations despite Defendant's requests, Defendant notified Plaintiff that it would have to change suppliers. *See id.*

Soon after Defendant stopped working with Plaintiff, Plaintiff initiated this lawsuit and refused to communicate with Defendant about the situation. This ended any chances of a settlement. Plaintiff claims damages for the amount it says it paid to remove Defendant's branding from its products and for the amount it spent to repackage and relabel them. *See id.* at ¶

18. Plaintiff also claims that it had approximately \$90,000 worth of products in its warehouse when Defendant learned of Plaintiff's breach and thus rescinded the contract. *See id.* at ¶ 17.

### ARGUMENT

To survive a motion to dismiss, a plaintiff must plead factual allegations in a non-conclusory way such that the plaintiff's right to legal relief rises above a speculative level. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). These allegations must also support a reasonably plausible inference that the Defendant was responsible for the alleged misconduct. *See id.* at 556. The Plaintiff in this case has failed to allege that it has suffered an injury for which a legal remedy exists, first because the relevant contract did not require Defendant to purchase from Plaintiff at all, and secondly because Plaintiff's complaint shows that it breached the relevant contract first, thereby rendering the contract voidable. *See generally* Pl.'s Compl.

Further, both parties agree that this contract is governed by Illinois law, as is specified in their General Supply Agreement, ¶ 5. ("This agreement will be governed by, and construed in accordance with, the laws of the state of Illinois, excluding its conflict of laws rules."). Illinois law confirms that Defendant was under no obligation to buy from Plaintiff, and also shows that Plaintiff breached the contract.

#### **I. PLAINTIFF'S BREACH OF CONTRACT COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

##### **A. Plaintiff Cannot Claim Defendant Breached by Working with Another Supplier or Failure to Place Purchase Orders Because The Contract Did Not Prohibit Such Conduct.**

Where no exclusivity or guarantee of purchase order clauses exist within an integrated contract, a court will not read in such provisions in under Illinois law, nor will it admit evidence of such additional provisions. *See Royal Consumer Products v. Walgreen Co.*, 2019 WL 1595889 at page 2 (N.D. Ill.) (stating that "[a] court must initially look to the language of a

contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties' intent." (quoting *Gallagher v. Lenart*, 874 N.E.2d 43, 58 (Ill.2007)). In this case, the General Supply Agreement did not contain a guarantee of purchase orders or an exclusivity clause.

When a contract contains an integration clause, a Court will interpret the "four corners" of the contract under the Parol Evidence Rule, as the Court did in *Royal Consumer Products*. See *id.* at 4 (holding that given an integration clause, an Illinois court is precluded from considering extrinsic evidence regarding any additional contract provisions). As in *Royal Consumer Products*, the integration clause in this contract indicates that this contract was final and complete, and that Plaintiff cannot introduce evidence of any outside promises of purchase orders or exclusivity. See General Supply Agreement, ¶ 6. Plaintiff cannot claim it was injured based on the allegations made in its complaint, because Defendant's choice not to make a purchase order and decision to work with another supplier were both permitted by the language of the contract.

This complaint must be dismissed under 12(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff has failed to point to any provisions of the General Supply Agreement that Defendant has supposedly violated, and merely asserts breach in a conclusory way. Even if Plaintiff was able to sufficiently allege breach by Defendant, however, its argument would still fail.

**B. Plaintiff Breached the Contract First, Rendering it Voidable and Vitiating Plaintiff's Ability to Claim Damages or Other Legal Relief.**

Plaintiff alleges that Defendant breached the parties' contract by suspending all purchase orders from Plaintiff. However, Plaintiff breached the contract first, which meant Defendant was entitled to suspend its performance of the contract.

Plaintiff breached the parties' contract by changing the manufacturing process of the relevant goods without notifying Defendant. *See* General Supply Agreement, ¶ 3.3 (stating that "Supplier agrees that it will not make any change in the specifications, manufacture, composition, form, quality, and/or formulation of the Products for any reason without the prior written approval of Bullseye."). By Plaintiff's own admission, Plaintiff changed how it manufactured the contracted products in Fall 2019 without notifying Defendant. *See* Pl.'s Compl. at ¶ 11 (stating that "in Fall 2019, Martian underwent renovations to its factory . . . Martian did not tell any of its customers about the renovations . . . as a result of these new machines and procedures, there were some minor changes to the products."). Plaintiff also conceded that the thread count and colors of the products were different after the change in manufacturing processes, even though the General Supply Agreement did not allow such modifications. *See id.* at ¶ 12 (stating that the thread counts and colorings of several products had changed after Defendant altered the manufacturing process). These modifications were done to products bearing Defendant's name, and Defendant was the one customers would associate with these changes in quality. *See id.* These changes contravened the core of the agreement made between the parties.

Plaintiff materially breached the General Supply Agreement, so Defendant's decision to suspend performance was justified. *See LB Steel, LLC v. Carlo Steel Corporation*, 428 Ill.Dec. 265 (App. Ct. Ill. 1st Dist. 2018) (holding that a material breach of a contract constitutes the failure to do an important or substantial undertaking set forth in a contract); *see also Rohr Burg Motors, Inc. v. Kulbarsh*, 384 Ill.Dec. 840 (App. Ct. Ill. 1st Dist. 2014) (holding that a party may suspend its performance of a contract in the instance of material breach by the other party). Plaintiff's failure to provide Defendant with products as specified in the contract met the

standard of material breach by undermining the very purpose of the contract, which meant that the Defendant had the right to suspend performance.

In changing the quality of Defendant's Bingo brand products without permission, Plaintiff breached the parties' General Supply Agreement. Plaintiff's material breach allowed Defendant to suspend its performance of the contract. Plaintiff has no legal right to recover in response to such cancellation due to its initial breach. Thus, Plaintiff's claim must be dismissed under 12(b)(6) for failure to state a claim upon which relief may be granted.

### **CONCLUSION**

Plaintiff's breach of Contract Claim and claims for damages must be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The contract did not require Defendant to make any purchase orders whatsoever. Furthermore, Plaintiff breached the parties' contract by altering the products it produced for Defendant. Under either analysis, the Plaintiff cannot sufficiently allege a legal injury caused by Defendant, and therefore cannot show that it is entitled to relief. The claim must be dismissed with prejudice under 12(b)(6).

## Applicant Details

First Name **Elizabeth**  
 Last Name **McElvein**  
 Citizenship Status **U. S. Citizen**  
 Email Address [emcelvei@umich.edu](mailto:emcelvei@umich.edu)  
 Address

**Address**  
**Street**  
**551 South State Street, 48109**  
**City**  
**Ann Arbor**  
**State/Territory**  
**Michigan**  
**Zip**  
**48109**  
**Country**  
**United States**

Contact Phone Number **8595335948**

## Applicant Education

BA/BS From **Scripps College**  
 Date of BA/BS **May 2014**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 6, 2022**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Michigan Technology Law Review**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
 Externships **Yes**

Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Seinfeld, Gil  
gsein@umich.edu  
734-647-3729

Freedman, Allison  
amfreed@umich.edu  
734-936-4224

McQuade, Barbara  
bmcquade@umich.edu  
734-763-3813

### **References**

Professor Barbara McQuade, bmcquade@umich.edu, 734-763-3813

Professor Gil Seinfeld, gsein@umich.edu, 734-615-7284

Professor Allison Freedman, amfreed@umich.edu, 734-936-4224

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

June 13, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year law student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2022-2024 term.

Prior to law school, I worked at the House Committee on the Judiciary. I drafted policy memoranda on matters ranging from electronic surveillance to election security, which sharpened my writing abilities. I also staffed depositions, public hearings, and interviews with White House and Department of Justice officials. I learned to comport myself with discretion on sensitive matters and to work under pressure with utmost attention to detail. This experience served me well last summer, when I interned for Judge James Boasberg, in the D.C. District Court. I prepared drafts of opinions and bench memoranda, an experience that crystallized my interest in pursuing a clerkship after graduation.

I am confident that these experiences, coupled with my work this summer, will allow me to immediately begin contributing to your chambers. I have attached my application materials for your review. Letters of recommendation from the following professors are also attached:

- Professor Barbara McQuade, bmcquade@umich.edu, 734-763-3813
- Professor Gil Seinfeld, gsein@umich.edu, 734-615-7284
- Professor Allison Freedman, amfreed@umich.edu, 734-936-4224

Thank you for your time and consideration.

Respectfully,

Elizabeth H. McElvein



## ELIZABETH H. MCELVEIN

Permanent: 2718 Devonshire Place NW, Apt. 1, Washington, DC 20008  
859-533-5948 • [emcelvei@umich.edu](mailto:emcelvei@umich.edu)

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, Michigan  
May 2022

*Juris Doctor* GPA: 3.54

Journal: *Michigan Technology Law Review*, Articles Editor

Honors: Dean's Scholarship

Activities: National Security Law Society, Board Member and 1L Representative  
Technology and Privacy Law Association, 1L Representative

#### SCRIPPS COLLEGE

Claremont, California  
May 2014

*Bachelor of Arts* in Politics & International Relations; French, *cum laude*

Honors: Senior Thesis: Economic Development in Haiti: A Comparative Historical Analysis, *honors*

Activities: Vice President, United for Reproductive and Gender Equity (URGE)  
Study Abroad: Université Paris 1 Panthéon-Sorbonne

### PROFESSIONAL EXPERIENCE

#### LEVY FIRESTONE MUSE

Washington, DC  
July-August 2021

*Summer Associate*

#### FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF COLUMBIA

Washington, DC  
May-June 2021

*Legal Intern*

#### U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Washington, DC  
June-August 2020

*Judicial Intern, Judge James E. Boasberg*

- Drafted memoranda and proposed opinions on matters appearing before the Court, which ranged from FOIA requests to civil forfeiture matters.
- Cite-checked and copy-edited judicial opinions drafted by the Judge and his clerks.

#### U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

Washington, DC  
August 2016-August 2019

*Professional Staff Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties*

- Staffed oversight hearings, depositions, and markups related to obstruction of justice and impeachment, preparing memoranda and question lines for the Committee Chair and members.
- Drafted and cite-checked court filings for the Committee and House General Counsel, including the U.S. House of Representatives lawsuit against White House Counsel Don McGahn, developing knowledge of D.D.C local rules.
- Collaborated with civil society and intelligence community stakeholders to negotiate, draft, and secure co-sponsors for legislation to reform a major electronic surveillance provision of the Foreign Intelligence Surveillance Act.
- Persuaded 196 Members of Congress to join a bicameral lawsuit brought against President Trump for violation of the foreign emoluments clause of the U.S. Constitution.

#### THE BROOKINGS INSTITUTION

Washington, DC  
November 2014-August 2016

*Senior Research Assistant, Governance Studies Program*

- Coordinated and enacted a Senior Fellow's research agenda; culled materials and produced short and long-form analyses of financial market regulation, international trade, and democratic institutions.
- Designed and implemented strategies to disseminate research, including convening public events and press briefings.

### ADDITIONAL

**Additional Experience:** Contribute to *Lanfare*, a national security law and policy blog.

**Security Clearance:** Tier 5 Top Secret (last active August 2019).

**Fellowships:** Wilson Center Congressional Fellowship on Cyber Security (Spring 2018); Wilson Center Congressional Fellowship on Artificial Intelligence (Fall 2018); Hoover Institute Cyber Boot Camp at Stanford University (Summer 2017).

**Languages:** French (proficient); Spanish (beginner).



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Issue Date: 06/07/2021

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: McElvein, Elizabeth H  
Student#: 43022096



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
<b>Fall 2019 (September 03, 2019 To December 20, 2019)</b>								
LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	B+
LAW	530	002	Criminal Law	Barbara McQuade	4.00	4.00	4.00	B+
LAW	580	003	Torts	Sherman Clark	4.00	4.00	4.00	B+
LAW	593	010	Legal Practice Skills I	Howard Bromberg	2.00		2.00	S
LAW	598	010	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	S
<b>Term Total</b>				<b>GPA: 3.300</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.300</b>		<b>12.00</b>	<b>15.00</b>	
<b>Winter 2020 (January 15, 2020 To May 07, 2020)</b>								
<i>During this term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, honors were not awarded for 1L Legal Practice.</i>								
LAW	510	001	Civil Procedure	Gil Seinfeld	4.00		4.00	PS
LAW	540	004	Introduction to Constitutional Law	Richard Primus	4.00		4.00	PS
LAW	594	010	Legal Practice Skills II	Howard Bromberg	2.00		2.00	PS
LAW	630	001	International Law	Steven Ratner	4.00		4.00	PS
<b>Term Total</b>					<b>14.00</b>		<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.300</b>		<b>12.00</b>	<b>29.00</b>	

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: McElvein, Elizabeth H  
Student#: 43022096



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
<b>Fall 2020 (August 31, 2020 To December 14, 2020)</b>								
LAW	601	001	Administrative Law	Julian Davis Mortenson	4.00	4.00	4.00	B+
LAW	873	001	Legislation	William Novak	2.00	2.00	2.00	A
LAW	900	300	Research	William Novak	1.00	1.00	1.00	A-
LAW	900	133	Research	Barbara Mcquade	2.00	2.00	2.00	A
LAW	920	001	Civil-Criminal Litigation Cln	David Santacroce	4.00	4.00	4.00	A-
				Allison Freedman				
				Kimberly Thomas				
LAW	921	001	Civil-Criminal Litig Cln Sem	David Santacroce	3.00	3.00	3.00	A-
				Allison Freedman				
				Kimberly Thomas				
<b>Term Total</b>				<b>GPA: 3.675</b>	<b>16.00</b>	<b>16.00</b>	<b>16.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.514</b>		<b>28.00</b>	<b>45.00</b>	
<b>Winter 2021 (January 19, 2021 To May 06, 2021)</b>								
LAW	525	001	Regulating Contagion/ Leg Hist	Nicholas Bagley	3.00	3.00	3.00	A
LAW	608	001	Advanced Legal Research	Kincaid Brown	2.00	2.00	2.00	B+
				Virginia Neisler				
LAW	711	001	Law of the Internet	Brian Willen	2.00	2.00	2.00	B+
LAW	716	001	Complex Litigation	Maureen Carroll	4.00	4.00	4.00	B+
LAW	893	001	Presidential Powers	Julian Davis Mortenson	2.00	2.00	2.00	A
LAW	900	155	Research	Howard Bromberg	1.00	1.00	1.00	A
<b>Term Total</b>				<b>GPA: 3.600</b>	<b>14.00</b>	<b>14.00</b>	<b>14.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.542</b>		<b>42.00</b>	<b>59.00</b>	

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: McElvein, Elizabeth H  
Student#: 43022096



*Paul R. Johnson*  
University Registrar

				Credit	
				Towards	
Course	Section			Graded	
Subject	Number	Course Title	Instructor	Hours	Program Grade
<b>Fall 2021 (August 30, 2021 To December 17, 2021)</b>					
Elections as of: 06/07/2021					
LAW	677	001 Federal Courts	Leah Litman	4.00	
LAW	681	001 First Amendment	Don Herzog	4.00	
LAW	693	001 Jurisdiction and Choice Of Law	Mathias Reimann	4.00	
LAW	875	001 Privacy, Tech & 4th Amendment	Evan Caminker	2.00	

End of Transcript  
Total Number of Pages 3

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## University of Michigan Law School Grading System

### Honor Points or Definitions

#### Through Winter Term 1993

A+	4.5
A	4.0
B+	3.5
B	3.0
C+	2.5
C	2.0
D+	1.5
D	1.0
E	0

#### Beginning Summer Term 1993

A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D+	1.3
D	1.0
E	0

#### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

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The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499

MICHIGAN LAW  
UNIVERSITY OF MICHIGAN  
625 South State Street  
Ann Arbor, MI 48109-1215

GIL SEINFELD  
Robert A. Sullivan Professor of Law  
Associate Dean for Academic Programming

June 03, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am pleased to write this letter of recommendation in support of Elizabeth McElvein, who has applied for a clerkship in your chambers. Liz is smart, a tenacious learner, and an exceptionally good writer. I am confident she has the skills and talents to be a valuable clerk, and I hope you will give her serious consideration.

I got to know Liz when she was a student in my Civil Procedure course during the tumultuous Winter 2020 semester. Liz came to office hours regularly (both before the pandemic set in and afterwards, when office hours were held remotely), and she proved dogged in her efforts to wrap her brain around the subjects we studied. It quickly became clear that Liz was willing and able to put in the work necessary to ensure a complete and sophisticated grasp of the relevant material. This came through in spades when exam time rolled around. Liz sought clarification about issues that had been eluding her and worked diligently to ensure that she was fully prepared. Our rules relating to students' performance on finals during the Winter 2020 semester (which called for mandatory P/F grading) prohibit me from offering comparative assessments of students' work or assigning "shadow grades." But they do not prevent me from telling you that Liz's hard work paid off. Her exam showcased a good grasp of the doctrines we had studied and facility applying those doctrines to new problems and unfamiliar situations. She spotted key issues and analyzed them with care and discernment.

One feature of Liz's work merits special attention: the quality of her writing. Liz's writing skills are absolutely top-shelf. She communicates complex ideas clearly and precisely. She does not bury these ideas in unnecessarily florid prose, but she is also fully capable of (and comfortable with) the deft, sophisticated use of language to develop arguments powerfully and express ideas with maximum clarity. Liz's writing skills will, I am confident, be a significant asset to her as a law clerk (and, one day, a practicing lawyer). She will write bench memos and (if this is your practice) draft opinions that you can really use.

Liz's capacity for legal analysis and her high-level writing skills will make her an asset in chambers. I hope you will give her serious consideration.

Sincerely,

Gil Seinfeld

Gil Seinfeld - gsein@umich.edu - 734-647-3729

June 01, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Re: Elizabeth McElvein Clerkship Application

Dear Judge Hanes:

I write in enthusiastic support of the clerkship application of Elizabeth (Liz) McElvein. Liz's superb writing skills, sharp analytical ability, and superior work ethic make her a perfect fit for a clerkship position in your chambers.

I had the pleasure of getting to know Liz over the course of the fall 2020 semester as a student in the Civil-Criminal Litigation Clinic at the University of Michigan Law School. I have spent countless hours supervising Liz on a variety of civil cases as well as engaging with her during our twice-weekly seminar on policy issues and trial advocacy skills. Liz stood out from the beginning as a diligent student who dives into cases, masters the facts, thoroughly researches the law, and presents relevant information in a coherent and logical fashion whether orally or in writing.

In one particularly difficult housing case, Liz drafted a stellar answer in a matter of days with little previous exposure to this area of the law. She researched open issues thoroughly and always came to supervision with thoughtful questions that helped move the case forward. She handled client communication seamlessly and negotiated with the landlord's attorney over the course of a month in a series of contentious interactions. Liz was always firm but professional and secured an outstanding result for her client. Her attention to detail is also unmatched; she continually noticed nuanced details in the relevant documents that ultimately helped her client.

Liz also did outstanding work on a state habeas corpus reply brief. She volunteered to take on a large piece of this project, dug into felony murder statutes from around the country, and argued complicated issues related to state post-conviction procedure in a clear, succinct fashion.

Beyond her case work, Liz always came to class eager to participate in discussions and contributed thoughtful and insightful comments. She also put on an excellent mock trial, working seamlessly with her partner to come up with a case theory, effectively use exhibits, deliver sharp directs and crosses, and give a closing that incorporated many elements of the trial on the fly. Poised, articulate, and exceptionally well prepared, Liz stood out in this exercise, as well.

In addition to her exceptional legal skills, Liz is considerate, hard-working, and a true team player. Liz would make a wonderful clerk.

Please do not hesitate to contact me with any questions you might have.  
Sincerely,

Allison M. Freedman  
Civil-Criminal Litigation Clinic  
University of Michigan Law School

Allison Freedman - amfreed@umich.edu - 734-936-4224



THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
HUTCHINS HALL  
ANN ARBOR, MICHIGAN 48109-1215

Barbara McQuade  
Professor from Practice

Telephone: (734) 763-3813  
email: [bmcquade@umich.edu](mailto:bmcquade@umich.edu)

May 25, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Elizabeth McElvein for a clerkship in your chambers. Liz is an exceptional student who serves as the articles editor for the Michigan Technology Law Review. She is interested in clerking to enhance her already excellent research and writing skills, and would be a marvelous asset to any judge.

I had the pleasure of having Liz as a student in my first year Criminal Law class. In a class of approximately 80 students, she stood out as someone who was always prepared to engage in discussions about legal doctrine and policy in an insightful way. I later had an opportunity to supervise her independent research for a writing project that was ultimately published. I found her to be a self-starter who requires very little supervision, but who welcomes feedback and enjoys the back-and-forth discussion of ideas. She is a strong writer who expresses her thoughts in a clean, clear, and well-organized way.

Before coming to law school, Liz worked as a senior research assistant in the Governance Studies program at Brookings Institution. In addition to fulfilling her responsibilities in that role, she sought out the opportunity to contribute to the Lawfare blog, a leading national security publication published in conjunction with Brookings. She later served as a staff member to the U.S. House Judiciary Committee, where she drafted court filings, checked citations, and prepared documents for hearings. Last summer, Liz worked as intern in the chambers of U.S. District Judge James Boasberg in Washington, D.C. These experiences no doubt honed her strong skills in research in writing.

I previously served as U.S. Attorney for the Eastern District of Michigan. In that role, I had the opportunity to hire more than 60 lawyers, and Liz has the kinds of qualities that I would look for in a new hire – a strong intellect, an ability to work with others respectfully, and effective communication skills. Liz possesses all of these qualities in abundance, which will make her a valuable resource as a law clerk.

I know from my own experience as a law clerk that a judge's chambers can be like a family, so it is important to bring in clerks who will add value, respect confidences, and perform every task with enthusiasm and excellence. I think Liz is very well suited to succeed in this environment. She will be an able assistant to any judge who hires her as a clerk. She has the intellectual capacity to tackle and solve challenging legal problems and will be a delightful colleague.

For all of these reasons, I enthusiastically recommend Elizabeth McElvein for a clerkship in your chambers. Please let me know if I can provide any additional information.

Sincerely,

Barbara L. McQuade

Barbara McQuade - [bmcquade@umich.edu](mailto:bmcquade@umich.edu) - 734-763-3813



**ELIZABETH H. MCELVEIN**

Permanent: 2718 Devonshire Place NW, Apt. 1, Washington, DC 20008  
859-533-5948 • [emcelvei@umich.edu](mailto:emcelvei@umich.edu)

I prepared this sample as part of my coursework for the Criminal Civil Litigation Clinic. The effort to secure the Defendant's relief from judgment involved the research and writing of many students over the course of several semesters, but this writing is my own work. My professor made modest revisions throughout the writing process and I have made every effort to redact them here.

The sample is excerpted from a reply brief in support of the Defendant's motion for relief from judgment. In short, I argue that it is procedurally proper to raise arguments about cruel and unusual punishment and that a mandatory sentence of life without parole for a felony murder offense is unconstitutional under the United States and Michigan constitutions.

This reply was submitted to a Circuit Court. I received permission to use the portion I wrote as a writing sample on condition that I redact the Defendant's personal identifying information, which I have done.

**A. MCR 6.508(D) does not bar Defendant from raising claims about cruel and/or unusual punishment.**

In the Motion for Relief from Judgment previously submitted to the Court, Defendant argues that a mandatory sentence of life in prison without the possibility of parole for a felony murder conviction where there was no finding of *mens rea* for the killing constitutes cruel and/or unusual punishment under the Michigan and the United States constitutions. *See* Def. Mot. at ¶¶ 25-28; *see also* Def. Br., 36-51. In its Reply, the prosecution does not engage with these arguments at all. Instead, it asserts in conclusory fashion that Defendant’s arguments “merely restate” or “fall under the same umbrella as” those related to legal innocence. Pr. Reply Br., 14. As such, the prosecution concludes, Defendant is “barred” from raising these claims under MCR 6.508(D)(2). *Id.* This is not the case. Defendant has never before challenged the constitutionality of his sentence, so these claims are not barred under MCR 6.508(D)(2). Moreover, Defendant’s case is not barred by 6.508(D)(3). Defendant demonstrates both that he has “good cause” for not previously raising the sentencing issue—the body of case law that undergirds his claim was not developed at the time Defendant last filed an appeal—and that he experienced “actual prejudice” in connection with his sentence. MCR 6.508(D)(3).

1. Defendant has not previously challenged the constitutionality of his sentence, so his claim is not barred by MCR 6.508(D)(2).

The prosecution contends that Defendant’s arguments about cruel and/or unusual punishment “boil down to the same concept” as legal innocence, which has “already been decided on direct appeal.” Pr. Reply Br., 14. Defendant, however, has never filed a claim or a direct appeal in a 6.500 petition challenging his sentence as a violation of the United States or Michigan constitutional bars on cruel or unusual punishment. The prosecution’s Response misapplies the

standard for assessing whether grounds for relief have previously been decided under MCR 6.508(D)(2).

A defendant is barred from seeking post-appeal relief if he “alleges grounds for relief which were decided against [him] in a prior appeal or proceeding.” MCR 6.508(D)(2). The Court should interpret previously-decided grounds narrowly and in a way that gives the “defendant the benefit of the doubt.” *People v. Boswell*, No. 228359, 2001 WL 1464533, at \*1 (Mich. Ct. App. Nov. 16, 2001). For Defendant’s claim to be precluded under 6.508(D)(2), the ground for relief must be the “exact issu[e]” raised in a prior motion. *Id.* (stating that even though the defendant “raised numerous [other] ineffective assistance of counsel claims” in a prior appeal, a claim pertaining to his attorney’s conflict of interest was not previously raised and thus was not barred by MCR 6.508(D)(2)). Defendant has not previously challenged the constitutionality of his sentence, so his claim is not barred.

On November 21, 1977, Defendant appealed his conviction as of right to the Court of Appeals, *see* Pr. Reply Br., 8, arguing he was unlawfully convicted because he did not receive a jury instruction as to malice with respect to the killing. *See* Def. Br., 11. On April 9, 2020, Defendant filed a 6.500 motion seeking relief from judgment arguing, among other grounds, that his sentence violates the prohibition on cruel and/or unusual punishment in the Michigan and United States Constitutions. *See* Def. Mot. at ¶ 25-28; *see also* Def. Br. p. 36-51. While Defendant’s 1977 claim pertains to the lawfulness of his conviction, the instant claim pertains to the nature of his sentence. It is unrelated to the previously-raised claim, so is not barred by MCR 6.508(D)(2).

2. Defendant had “good cause” for not previously disputing his sentence and he experienced “actual prejudice.” His claim is not barred by MCR 6.508(D)(3).

The prosecution does not argue that Defendant's appeal cannot proceed as a result of MCR 6.508(D)(3), but if it did, the argument would be unavailing. A defendant is not entitled to relief if he "alleges grounds for relief...which could have been raised on appeal from the conviction and sentence or in a prior motion." MCR 6.508(D)(3). An exception to this rule exists, however, where two criteria are fulfilled: (1) "the defendant demonstrates good cause for failure to raise such grounds on appeal or in the prior motion," MCR 6.508(D)(3)(a); and (2) the defendant demonstrates "actual prejudice" that renders his sentence "invalid." MCR 6.508(D)(3)(b)(iv). Defendant fulfills both criteria and therefore is entitled to relief.

Defendant has "good cause" for failing to raise arguments about the constitutionality of his sentence during his 1977 direct appeal: the operative case law was not developed until 2010. MCR 6.508(D)(3)(a). The relevant line of Eighth Amendment cases, Defendant argued in his Brief in Support of Motion for Relief from Judgment ("Brief"), uses categorical rules to define constitutional standards relating the characteristics of the offender and the type of offense. *See* Def. Br. at 37; *see also Graham v. Florida*, 560 U.S. 48; 130 S. Ct. 2011, 2017; 167 L. Ed. 2d 825, 828 (2010). While the Court usually applies this approach to assessing the constitutionality of the death penalty, it has been applied to a "class of offenders" who, like Defendant, are serving a life sentence without the possibility of parole. *See* Def. Br. at 37; *see also Graham*, 560 U.S. at 61.

When assessing categorical Eighth Amendment rules, the Court applies a two-prong approach. First, it considers "objective indicia of society's standards" to determine how the punishment and sentencing practice is viewed on a national scale. Def. Br. at 37, *see also Graham*, 560 U.S. at 61 (quoting *Roper v. Simmons*, 543 U.S. 551, 563; 125 S. Ct. 1183, 1191; 161 L. Ed. 2d 1, 17 (2005)). Second, it exercises "its own independent judgment" to determine

whether there is a constitutional violation. Under both prongs, Defendant demonstrates that his sentence constitutes cruel and/or unusual punishment. *See* Def. Br. at 38-44.

*Graham* announces a substantive constitutional rule on the meaning of the Eighth Amendment, so its holding must be given retroactive effect. *See* 560 U.S. at 49; *see also* *Montgomery v. Louisiana*, 570 U.S. 190, 206-212; 136 S. Ct. 718, 732-736; 193 L. Ed. 2d 599, 618-622 (2016) (stating that *Miller v. Alabama* announced a substantive constitutional rule and giving it retroactive effect). However, since *Graham* was not decided until 2010—33 years after Defendant filed a direct appeal—Defendant has “good cause” for not previously raising issues of cruel and/or unusual punishment. MCR 6.508(D)(3)(a).

Defendant also demonstrates “actual prejudice.” MCR 6.508(D)(3)(b). Had the substantive constitutional law applying “categorical rules” to an “entire class of offenders” applied to Defendant, he would not have been sentenced to mandatory life without parole—the harshest sentence in Michigan—as he had no proven *mens rea* with respect to the killing and he did not kill or attempt to kill. *See* Def. Br. at 40-44 (arguing that Defendant’s sentence is unconstitutional because it “fails to distinguish between his culpability and the culpability of others convicted of first-degree murder who willfully committed murder,” because it “serves no penological purpose,” and because it is “disproportionate” to the crime committed). Defendant received an unconstitutional sentence and as such, his sentence is “invalid.” MCR 6.508(D)(3)(b)(iv). This constitutes “actual prejudice.” MCR 6.508(D)(3)(b).

Defendant has shown “good cause” for failing to previously raise arguments about the unconstitutional nature of his sentence, MCR 6.508(D)(3)(a), and demonstrated that he experienced “actual prejudice” in connection with his sentence. MCR 6.508(D)(3)(b). His appeal, therefore, is not barred by MCR 6.508(D)(3).

**B. Defendant's sentence is at odds with the sentencing practice of many states. This has implications for the constitutionality of his sentence under the United States and Michigan constitutions.**

Defendant is serving life in prison without the possibility of parole—the harshest punishment available in Michigan—for a crime where he did not kill or attempt to kill. *See* Def. Mot. at ¶ 25. The jury made no finding of *mens rea* with respect to the killing. *Id.* For the reasons stated *supra*, it is procedurally proper for Defendant to argue that his sentence constitutes cruel and/or unusual punishment under the United States and Michigan constitutions. This argument is also substantively valid. As Defendant argued in his Brief, his sentence does not fulfill the purposes of punishment and is not proportional to a crime which lacks proven malice. *See* Def. Br. at 40-42 (regarding the lesser culpability of person who does not possess any *mens rea* for murder), 49-51 (regarding the purpose of punishment), 45-46 (regarding proportionality). Moreover, his sentence is at odds with changes to felony murder laws in Michigan and in other states. *See* Def. Br. at 38-40, 47-49 (arguing that state and federal law have “move[d] away from imposing the harshest possible punishment for someone like [Defendant]”), 46-47 (identifying changes to felony murder laws in Michigan). After submitting the Brief, Defendant’s counsel performed additional research on state sentencing practices, which provides further evidence that Defendant’s sentence is unconstitutional.

At the writing of this reply, no more than twelve states—Alabama,<sup>1</sup> Delaware,<sup>2</sup> Iowa,<sup>3</sup> Louisiana,<sup>4</sup> Michigan,<sup>5</sup> Mississippi,<sup>6</sup> Nebraska,<sup>7</sup> North Carolina,<sup>8</sup> Pennsylvania,<sup>9</sup> Rhode Island,<sup>10</sup> South Dakota<sup>11</sup> and West Virginia<sup>12</sup>—impose a *mandatory* sentence of life in prison without the possibility of parole for felony murder. In other words, thirty-eight states do not mete out the punishment Defendant received. In addition, as described in Defendant’s Motion for Relief from Judgment, life without parole for felony murder is a sentence *not permitted* in many states. *See* Def. Br. at 38-40, 47-49 (regarding changes to states’ felony murder laws). Defendant’s sentence, therefore, is at odds with the practice of most states. This finding has implications for understanding the permissibility of Defendant’s sentence on cruel and/or unusual punishment grounds under the United States and Michigan constitutions.

### 1. The United States Constitution

<sup>1</sup> Ala. Code § 13A-6-2 (LexisNexis, Lexis Advance through Acts 2020, No. 20-1 to 20-206, but not including corrections and changes made to the 2020 session laws by the Code Commissioner).

<sup>2</sup> Del. Code Ann. tit. 11, § 636 (Lexis Advance through 82 Del. Laws, ch. 292); Del. Code Ann. tit. 11, § 4209 (Lexis Advance through 82 Del. Laws, ch. 292).

<sup>3</sup> Iowa Code § 902.1 (LexisNexis, Lexis Advance through legislation from the 2020 Regular Session of the 88th General Assembly).

<sup>4</sup> La. Rev. Stat. Ann. § 14:30.1 (LexisNexis, Lexis Advance through the end of the 2020 Regular Session, through the end of the 2020 First Extraordinary Session, and through Act 45 of the 2020 Second Extraordinary Session. Revisions by the LSLI are in progress).

<sup>5</sup> Mich. Comp. Laws Serv. § 750.316 (LexisNexis, Lexis Advance through Public Act 1-249 from the 2020 Legislative Session).

<sup>6</sup> Miss. Code Ann. § 97-3-21 (Lexis Advance through the 2020 Regular Session, including changes approved by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, with the exception of Chapters 497, 498, 500 and 503).

<sup>7</sup> Neb. Rev. Stat. Ann. § 29-2520 (LexisNexis, Lexis Advance through all Acts of the 2020 regular session of the 106th Legislature Second Session and the 2020 ballot initiative contingencies).

<sup>8</sup> N.C. Gen. Stat. § 14-17 (Lexis Advance through Session Laws 2020-97 of the 2020 Regular Session of the General Assembly, but does not reflect possible future codification directives relating to Session Laws 2020-95 through 2020-97 from the Revisor of Statutes pursuant to G.S. 164-10).

<sup>9</sup> 18 Pa. Cons. Stat. Ann. § 2502 (LexisNexis, Lexis Advance through 2020 Regular Session Act 113, 115-118 and 120-130; P.S. documents are current through 2020 Regular Session Act 113, 115-118 and 120-130); 18 Pa. Cons. Stat. Ann. § 1102 (b) (LexisNexis, Lexis Advance through 2020 Regular Session Act 113, 115-118 and 120-130; P.S. documents are current through 2020 Regular Session Act 113, 115-118 and 120-130).

<sup>10</sup> R.I. Gen. Laws Section 11-23-2 (Lexis Advance through Chapter 79 of the 2020 Session).

<sup>11</sup> S.D. Codified Laws § 22-16-4 (LexisNexis, Lexis Advance through acts received as of October 1st of the 2020 General Session of the 95th South Dakota Legislative Assembly and Supreme Court Rule 20-06).

<sup>12</sup> W. Va. Code § 62-3-15 (LexisNexis, Lexis Advance through all 2020 Regular Session Legislation).

When addressing categorical Eighth Amendment rules, the United States Supreme Court examines “objective indicia of society’s standards, as expressed in . . . state practice” and “the standards elaborated by controlling precedent and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning and purpose.” *Graham* 560 U.S. at 60-61 (citing *Kennedy v. Louisiana*, 554 U.S. 407, 421; 128 S. Ct. 2641, 2650; 171 L. Ed. 2d 525, 540 (2008)). These factors have been briefed at length, *see* Def. Br., 38-44, but the research described above shows that Michigan’s practice is out of step with the practice of thirty-eight other states. This bolsters the claim that compared to other states, Michigan levies an “incongruent [and] severe punishment” on Defendant and, as such, the sentence is not permitted by the United States Constitution. *Id.*, 39.

## 2. The Michigan Constitution

Under the Michigan state constitution analysis, the Court must examine four factors in determining whether a punishment is cruel *or* unusual: (1) proportionality; (2) evolving standards in Michigan; (3) evolving standards in other jurisdictions; and (4) the purposes of punishment, with an emphasis on rehabilitation. *See People v. Bullock*, 485 N.W. 2d 866, 873-74; 440 Mich. 15, 33-36 (Mich. 1992); *see also* Def. Br. at 44. All four factors have been briefed at length, *see* Def. Br., 44-51, but the additional research implicates the third factor, strengthening Defendant’s claim that his sentence is inconsistent with evolving standards in states other than Michigan. The fact that just twelve states impose a sentence like Defendant’s without regard for the individual’s level of culpability shows that Defendant’s sentence is not consistent with the standards of decency in other jurisdictions. This is further evidence that Defendant’s punishment is not permitted by the Michigan Constitution.



**Applicant Details**

First Name **Eileene**  
 Last Name **Mckee**  
 Citizenship Status **U. S. Citizen**  
 Email Address [emckee1@tulane.edu](mailto:emckee1@tulane.edu)  
 Address

Address
<b>Street</b> <b>1413 Hillary St.</b> <b>City</b> <b>New Orleans</b> <b>State/Territory</b> <b>Louisiana</b> <b>Zip</b> <b>70118</b>

Contact Phone Number **2158016929**

**Applicant Education**

BA/BS From **George Washington University**  
 Date of BA/BS **May 2017**  
 JD/LLB From **Tulane University Law School**  
[http://www.nalplawschoolsonline.org/ndlsdir\\_search\\_results.asp?lscd=71904&yr=2011](http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=71904&yr=2011)  
 Date of JD/LLB **May 21, 2021**  
 Class Rank **33%**  
 Law Review/Journal **Yes**  
 Journal(s) **The Sports Lawyers Journal**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial  
Internships/            **No**  
Externships  
Post-graduate  
Judicial Law           **No**  
Clerk

## Specialized Work Experience

## Recommenders

Rivera, Edward  
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## References

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3. Ed Rivera  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Eileene McKee  
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September 14, 2020

The Honorable Elizabeth W. Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for a 2021-2023 clerkship with your chambers. After observing magistrate court as a summer extern at the U.S. Attorney's Office, I have wanted to clerk for a magistrate judge because of the important role magistrate judges play in case management and settling pretrial disputes. With this position, I hope to broaden my exposure to civil litigation and discovery issues, while also offering my unique experiences and skill set to your chambers.

I am currently a 3L at Tulane University Law School and a graduate of the George Washington University. I have loved living in New Orleans but am looking to broaden my legal experience in a new location. As my resume indicates, I have sought opportunities to gain practical experience in criminal law, in the summers during law school and in the academic year. This year I was selected as a student attorney in Tulane Law's Domestic Violence Clinic, which has given me the opportunity to serve members of the New Orleans community and use my legal education to advocate for those who cannot advocate for themselves.

For the past two summers, I have interned with U.S. Attorney's Offices in New Orleans, LA and Camden, NJ. This summer in the New Jersey office, I had the opportunity to hone my research and writing skills by drafting responsive motions and legal memoranda to support Assistant U.S. Attorneys. Last summer, I also had the invaluable experience of working with the appellate unit in drafting portions of an appellate brief and assisting with preparations for oral arguments in front of the U.S. Court of Appeals for the Fifth Circuit.

As a result of my time at Tulane Law School and the U.S. Attorney's Offices, I have gained the confidence to tackle any problem and I have become a dependable team player, willing to help with any task. I know that I can use my knowledge and work ethic to make significant contributions to your chambers. My resume, unofficial transcript, and writing sample are submitted with this application, as well as two recommendation letters. I would welcome the opportunity to interview with you and look forward to hearing from you soon.

Respectfully,

Eileene McKee

**Eileene McKee**

1413 Hillary St.  
New Orleans, LA 70118

emckee1@tulane.edu  
(215) 801-6929

**Education**

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**Tulane University Law School**  
*Juris Doctor Candidate*  
Cumulative GPA: 3.417

New Orleans, LA  
May 2021

Activities: *Managing Editor*, The Sports Lawyers Journal; *Student Attorney*, Domestic Violence Clinic & Women's Prison Project; *Member*, Tulane Women in Law & Criminal Law Society

**The George Washington University**  
*Bachelor of Arts in Political Science, Minor in Public Health*

Washington D.C.  
May 2017

Study Abroad: University of Melbourne  
*Coursework in Australian History and Global Health*

Melbourne, Australia  
Spring 2016

Activities: *Intern*, O'Riordan Bethel Law Firm (May 2015 – May 2017); *Member*, Delta Gamma Fraternity, fundraising for Service for Sight, active in community service projects.

**Experience**

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**U.S. Attorney's Office for the District of New Jersey**  
*Summer Internship*

Camden, NJ  
June – August 2020

- Conducted legal research and drafted responsive motions on suppression of evidence and motions in response to requests for termination of supervised release.
- Researched and drafted legal memoranda for criminal division on issues of venue, discovery obligations, and admissibility of confessions.
- Participated in team discussions regarding case strategy.

**U.S. Attorney's Office for the Eastern District of Louisiana**  
*Summer Externship*

New Orleans, LA  
May – August 2019

- Assisted with trial preparation and special projects for criminal and civil divisions.
- Conducted legal research and drafted legal memoranda and responsive motions on evidence admissibility issues.
- Drafted proposed jury instructions for narcotics conspiracy trial.
- Assisted appellate unit in drafting appellate briefs.
- Participated in preparation for oral arguments in front of the U.S. Court of Appeals for the Fifth Circuit.

**The O’Riordan Bethel Law Firm, LLP**  
*Senior Paralegal*

Washington D.C.  
May 2017 – July 2018

- Responsible for firm of six attorneys and the supervision and training of three paralegals/administrative assistants.
- Researched and summarized pleadings and correspondence produced by opposing parties.
- Interacted with municipal, state, and federal government agencies on behalf of small business clients to establish business entities and obtain certifications and licenses.

**Interests**

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Enjoys running, yoga, cooking, reading and traveling.

**Eileene McKee**  
**Tulane University Law School**  
**Cumulative GPA: 3.417**

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Force	A-	4.00	
Contracts I	Davies	B	3.00	
Criminal Law	Hoeffel	A-	3.00	
Legal Research & Writing	Brazeal	B+	2.00	
Torts	Childress	B+	4.00	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Common Law Property	Gordley	A-	4.00	
Constitutional Law I	Griffin	B+	4.00	
Contracts II	Wessman	A-	3.00	
Legal Research & Writing	Brazeal	B+	2.00	

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Enterprises	Lipton	A-	4.00	
Com'l Law Secured Trans	Wessman	B+	3.00	
Evidence	Hoeffel	B+	3.00	
Legal Profession	Childress	B+	3.00	
Sports Law Journal	Feldman	IP	0.00	
Wrongful Convictions	Maw	B-	2.00	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Con Crim Pro: Investigation	Hancock	P	3.00	
Corporate Governance	Fishman	HP	1.00	
Income Taxation	McCarden	P	3.00	
Mergers & Acquisitions	Lipton	P	3.00	
Sports Law Journal	Feldman	IP	1.00	
Trial Advocacy	Luker	P	3.00	



**U.S. Department of Justice**

*Eastern District of Louisiana  
U.S. Attorney's Office*

J. Ryan McLaren  
Assistant United States Attorney

650 Poydras Street, Suite 1600  
New Orleans, Louisiana 70130

Telephone: (504) 680-3037  
Fax: (504) 589-4661

July 28, 2020

**Re: Letter of Recommendation for Eileene McKee**

To Whom It May Concern:

I write this letter of recommendation in support of Eileene McKee, whom I understand is applying for a judicial clerkship. I recommend Eileene wholeheartedly and without reservation, as explained further below.

Eileene worked as a law clerk in our office during the Summer of 2019. During that time, I worked closely with Eileene on several matters, including an appellate brief with a complex severance issue that Eileene handled. *See United States v. Barnes*, Fifth Circuit No. 18-31074, Doc. 00515048829. Additionally, Eileene drafted an opposition to a motion for bond pending appeal that resulted in a favorable ruling from the district court. *See United States v. Evans*, E.D. La. No. 15-61, Doc. 1841. In my experience with Eileene, she has shown herself to be an excellent researcher and writer, and, more importantly, a quintessential team player who can work both collaboratively and independently as the matter requires.

Based on my experience with Eileene, I am confident she will succeed in any setting, particularly as a judicial clerk. She has demonstrated an ability to handle a heavy workload and meaningfully analyze complex legal issues. I recommend her highly. Please do not hesitate to contact me if you have any questions or if I can be of any further assistance.

Sincerely,

/s/ J. Ryan McLaren

J. RYAN MCLAREN

August 27, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to you about Eileene McKee, a rising third year student at Tulane Law School. I had the pleasure of teaching Eileene in two of my classes, Business Enterprises and Mergers & Acquisitions. Eileene is a dedicated student with a commitment to using her legal skills to have a direct impact on people's lives, and I believe she would make a fine law clerk.

Eileene first discovered how much she enjoyed the law by working as a paralegal for a small women-led law firm. It was through that experience that she developed a love for legal research and the process of finding solutions to legal problems. In law school, that passion only intensified through her study of criminal law, her internships with US Attorneys, and her work in Tulane's Domestic Violence clinic. She hopes to eventually become a federal prosecutor, because it will allow her to use her legal skills to have an immediate, positive effect on the world.

Eileene has found that her favorite classes in law school are those that most clearly blend legal theory and practical application. These include the criminal classes, as well as my Business Enterprises class. The "A-" that she earned in Business Enterprises is a testament to her strong work ethic and her solid ability to synthesize a complex mixture of common law and statutory law concepts. Eileene has also found a way to blend her hobbies and her legal work: she is an avid runner, an interest that she has incorporated into her studies through her work on the Sports Lawyers Journal. In sum, Eileene is creative and motivated, and would provide excellent assistance in any chambers.

If I can provide any further information, please do not hesitate to contact me.

Respectfully yours,

Ann M. Lipton  
Associate Professor of Law

Ann Lipton - [alipton@tulane.edu](mailto:alipton@tulane.edu) - 504.862.3526



WRITING SAMPLE

Eileene McKee

emckee1@tulane.edu  
1413 Hillary St.  
New Orleans, LA 70118  
(215) 801-6929

As a summer intern at the U.S. Attorney's Office for the Eastern District of Louisiana, I prepared the attached Opposition to Second Motion of Defendant for Bail Pending Appeal for Assistant U.S. Attorney Ryan McLaren. To preserve confidentiality, some portions of this motion have been redacted. I have received permission from my employer to use this motion as a writing sample.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

**CRIMINAL DOCKET NO.:**

**VERSUS**

**SECTION: E**

**GOVERNMENT’S OPPOSITION TO SECOND MOTION OF DEFENDANT  
FOR BAIL PENDING APPEAL**

**I. Facts and Procedural History**

Two years have passed since defendant \_\_\_\_\_ was convicted of five counts of health care fraud. (R. Doc. 670, as corrected by R. Doc. 691 at 30-32.) After the verdict, \_\_\_\_\_ filed motions for acquittal and for a new trial pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure. (R. Doc. 1102.) \_\_\_\_\_’s post-trial motions were denied in August 2018 and he was sentenced in September 2018. (R. Docs. 1482, 1519.) \_\_\_\_\_ has appealed his sentence to the Fifth Circuit (R. Doc. 1547) and following the denial of his first motion for release pending appeal (R. Doc. 1608), he has filed this second motion for bail pending appeal. (R. Doc. 1822.)

**II. Law and Argument**

Section 3143(b) of Title 18 of the United States Code governs the granting of bail pending appeal. Section 3143(b)(1)(B)(iv) provides that a defendant who is not a flight risk or a danger to the community, and who has been sentenced to a term of imprisonment, shall be detained pending appeal, unless a court finds that the appeal “raises a substantial question of law or fact likely to result in - (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.” 18 U.S.C. § 3143.

The Fifth Circuit requires that a defendant show that the appeal raises a substantial question of law or fact and that the substantial question, if decided favorably to the defendant, is likely to result in reversal, in an order for a new trial, in a sentence without imprisonment, or in a sentence with reduced imprisonment in order for it to grant a motion for bail pending appeal. *United States v. Clark*, 917 F.2d 177, 179 (5th Cir. 1990). It is the defendant's burden to demonstrate that the requirements of 18 U.S.C. § 3143(b)(1) have been met. *Id.*

A question is determined to be a "substantial question of law or fact," if the question is one which is "novel, which has not been decided by controlling precedent, or which is fairly doubtful." *United States v. Valera-Elizondo*, 761 F.2d 1020, 1023 (5th Cir. 1985). In *Valera-Elizondo*, the Fifth Circuit held that "a court may find that reversal or a new trial is 'likely' only if it concludes that the question is so integral to the merits of the conviction on which [the] defendant is to be imprisoned that a contrary appellate holding is likely to require reversal of the conviction or a new trial." (761 F.2d 1020). It must be more probable than not that the Fifth Circuit will reverse, order a new trial, or impose no imprisonment or less imprisonment in order for the Court to grant release pending appeal. *Id.* at 1025.

fails to overcome the presumption in favor of detention pending appeal. As this Court determined in denying [redacted]'s first motion for bail pending appeal, there was sufficient evidence to find [redacted] guilty of health care fraud, and [redacted] has failed to show that his appeal raises substantial questions of law or fact. In support of his second motion for bail pending appeal, [redacted] raises three issues which he believes are substantial questions that are likely to result in reversal. First, [redacted] alleges that the evidence against him is insufficient for a conviction. (R. Doc. 1822-1 at 3-4.) In the case of patient "JoWi", [redacted] alleges that the government offered no evidence to show that JoWi was not under his care. (R. Doc. 1822-3 at

26-31.) Regarding patient “MaGr”, argues that there was no reliable evidence that patient MaGr did not qualify for home health care and he contends that the government put on no evidence to prove that he failed to provide the services that he billed to Medicare. (R. Doc. 1822-3 at 31-35.) Second, contends that it was error for the Court to admit Dr. Lutz’s testimony, specifically that Dr. Lutz’s testimony was unreliable and misleading to the jury. (R. Doc. 1822-3 at 36.) Lastly, ’s alleges the Court committed sentencing errors due to the Court’s refusal to hold an evidentiary hearing and because ’s presentence report contained an unsubstantiated finding that was legally responsible for losses equal to every patient of his who had been provided home health care services by Abide. (R. Doc. 1822-3 at 43, 51.) None of these issues raises a “substantial question” likely to result in reversal. Accordingly, this Court should deny s second motion for bail pending appeal.

challenges the sufficiency of evidence against him presented at trial and alleges that it was inadequate to support the Court finding he was guilty of health care fraud in relation to patients, JoWi and MaGr. (R. Doc. 1822-3 at 35.) argues that the government did not prove that patients JoWi and MaGr were ineligible for home health care. (R. Doc. 1822-3 at 17.) At trial, the government presented direct evidence of health care fraud, by the testimonies of Dr. Lutz, Agent Bradford, and himself. A jury convicted under 18 U.S.C. § 1347(a), which makes it a crime for anyone to “knowingly and willfully execute, or attempt to execute, a scheme or artifice to defraud any health care benefit program; or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.” 18 U.S.C. § 1347(a). This Court found that the government had presented sufficient evidence to establish that

committed violations under 18 U.S.C. § 1347(a) and so this Court should conclude that a substantial question of law on this issue does not exist. (R. Doc. 1685 at 11.)

Additionally, [redacted] argues that the Court erred in allowing the expert testimony of Dr. Lutz. (R. Doc. 1822-3 at 36.) [redacted] alleges that Dr. Lutz's testimony was unreliable and misleading to the jury, and he alleges Dr. Lutz's definition of "homebound" raises a substantial question of law. (R. Doc. 1822-3 at 36-39.) [redacted] contends that the government cannot show beyond a reasonable doubt that the Court's errors are harmless because Dr. Lutz's expert testimony was the only basis for the jury to conclude that patient MaGr was not homebound. (R. Doc. 1822-3 at 42.)

The Court's determination of admissibility of expert testimony is reviewed for abuse of discretion under the harmless error doctrine. *United States v. Ramos*, 71 F. App'x 334, 335 (5th Cir. 2003). This Court has already addressed the arguments regarding admissibility of Dr. Lutz's testimony in its order dated August 27, 2018 (R. Doc. 1482.) and in its order denying defendants motions for release pending appeal dated January 15, 2019. (R. Doc. 1685.) This Court found that Dr. Lutz was properly certified as an expert. (R. Doc. 1685 at 31.) If [redacted] had an issue with Dr. Lutz's testimony, he was able to address it and any others on cross-examination of Dr. Lutz.

[redacted] has failed to demonstrate that an appellate court would likely find that this Court abused its discretion or that [redacted]'s substantial rights were affected, and so [redacted]'s second motion for bail pending appeal on that basis should be denied.

Lastly, [redacted] alleges there is a substantial question due to the Court's refusal to hold an evidentiary hearing and the Court's method of calculating the amount of loss attributed to him. (R. Doc. 1822-3 at 43-55.) [redacted] argues he had a right to present evidence of non-fraudulent billings at an evidentiary hearing prior to his sentencing. (R. Doc. 1822-3 at 46-50.) This Court

properly prohibited \_\_\_\_\_ from introducing any “evidence regarding the admission of worthy patients into home health care...[and] evidence of specific instances of uncharged proper Medicare billing” in its order granting the Government’s Motion *in Limine* to Preclude Introduction of “Good Acts”. (R. Doc. 725.) In *United States v. Marrero*, the Fifth Circuit ruled that accurate billings are inadmissible as “good acts” character evidence in a health care fraud case. 904 F.2d 251, 259-60 (5th Cir. 1990). In that case, the defendant sought to present evidence of specific instances in which she accurately billed the government and the trial court excluded this evidence. *Id.* The Fifth Circuit stated, “the fact that [the defendant] did not overcharge in every instance in which she had an opportunity to do so is not relevant to whether she, in fact, overcharged as alleged in the indictment.” *Marrero*, 904 F.2d at 260. Therefore, this Court was correct in its denial of \_\_\_\_\_’s motion for an evidentiary hearing.

\_\_\_\_\_ argues that he is entitled to be resentenced because there remains a substantial question of law regarding how the court calculated his convictions for healthcare fraud as part of the larger Medicare fraud scheme. (R. Doc. 1822-1 at 4-5.) Under the Sentencing Guidelines, the court calculates an offense level by estimating the loss resulting from the fraud. U.S.S.G § 2B1.1 cmt. 3(C). This Court found that the fraud in this case “was pervasive and difficult to detect” and “so pervasive that separating legitimate from fraudulent conduct [was] not reasonably practicable.” (R. Doc. 1662 at 22:6.) (citing *United States v. Hebron*, 684 F.3d 554 (5th Cir. 2012)). This Court has previously determined that \_\_\_\_\_ has not raised a substantial question of law in regards to his sentencing, and should deny \_\_\_\_\_’s second motion for bail pending appeal on the same grounds.

Losses were calculated by counting Medicare payments made after \_\_\_\_\_ began to participate in the scheme to defraud Medicare. (R. Doc. 1685 at 32.) Under § 1B1.3(a)(1)(A),

when calculating an offense level for a “a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy),” a court includes “all acts and omissions of others that were (i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity.” U.S.S.G. § 1B1.3(a)(1)(A). In calculating [redacted]’s offense level, the court used conduct related to [redacted]’s acts and patients after he began his participation in the Medicare fraud scheme, in accordance with Sentencing Guidelines. (R. Doc. 1685 at 33.) [redacted] argues that the evidence presented by the government was insufficient to prove that every billing related to [redacted]’s patients was fraudulent and preventing [redacted]’s from putting on evidence at an evidentiary hearing violated his right to due process. (R. Doc. 1822-3 at 43, 49.) He also alleges that the Court erred by aggregating all billings associated with [redacted] to calculate the loss amount. (R. Doc. 1822-3 at 53.)

In *United States v. Hull*, the Fifth Circuit established the standard of findings of fact for sentencing purposes, which is the lower standard of preponderance of evidence. 160 F.3d 265 (5th Cir. 1998). Courts are permitted to consider all relevant conduct committed by the defendant when calculating losses for sentencing. U.S.S.G. § 1B1.3(a)(1)(A). Although [redacted] was acquitted on the charge of conspiracy, that did not preclude the Court from sentencing him for his personal conduct in the Medicare fraud scheme. (R. Doc. 1662 at 15:4-14.) [redacted]’s arguments that the court erred by conflating the pervasive fraud at Abide with the fraud attributable to [redacted] are unpersuasive. [redacted] has failed to raise a substantial question of law as to the Court’s calculation of the loss amount attributable to him and he failed to raise a substantial question as to his sentencing.

Because none of the issues presents raises a substantial question of law or fact and because it is unlikely that his appeal will result in reversal or a new trial, this Court should find that has failed to meet his burden under 18 U.S.C. § 3143(b)(1) and deny s Second Motion for Bail Pending Appeal.

### CONCLUSION

For the foregoing reasons, Defendant 's Second Motion for Bail Pending Appeal should be denied.



## Applicant Details

First Name **Sabrina**  
 Middle Initial **S**  
 Last Name **Merold**  
 Citizenship Status **U. S. Citizen**  
 Email Address [smerold@pennlaw.upenn.edu](mailto:smerold@pennlaw.upenn.edu)  
 Address

**Address**  
**Street**  
**18 Sherbrooke Drive**  
**City**  
**Florham Park**  
**State/Territory**  
**New Jersey**  
**Zip**  
**07932**  
**Country**  
**United States**

Contact Phone Number **9738206303**

## Applicant Education

BA/BS From **Swarthmore College**  
 Date of BA/BS **May 2017**  
 JD/LLB From **University of Pennsylvania Law School**  
<https://www.law.upenn.edu/careers/>  
 Date of JD/LLB **May 20, 2020**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Journal of Law and Social Change**  
 Moot Court Experience **No**

## Bar Admission

Admission(s) **District of Columbia**

## Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

### Recommenders

Julia, Simon-Mishel  
jsimonmishel@philalegal.org  
Mayeri, Serena  
smayeri@law.upenn.edu  
215-898-6728

### References

Christine Berger, Chief Counsel Senator Mazie Hirono (562-650-7115;  
Christine\_Berger@judiciary-dem.senate.gov);

Margaret Zhang, Staff Attorney Women's Law Project  
(215-928-5767; mzhang@womenslawproject.org);

Professor Kara Finck, University of Pennsylvania Law School Practice  
Professor of Law, Director of Interdisciplinary Child Advocacy Clinic  
(718-902-6812; kfinck@law.upenn.edu)

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

**Sabrina Merold**

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August 24, 2020

The Honorable Elizabeth W. Hanes  
United States District Court  
Eastern District of Virginia  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
United States Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to request your consideration of my application for a clerkship beginning in 2021. I am a May 2020 graduate from the University of Pennsylvania Law School. In the fall of 2020, I will begin my legal career as a Penn Law Public Interest Fellow at the Center for Reproductive Rights in Washington, DC. I would welcome the opportunity to learn from your experience not only as a judge, but also as a former federal public defender and civil litigator.

During law school, I worked to develop strong skills in legal research, analysis, and writing through courses, internships, clinics, and pro bono opportunities. Through my coursework in appellate advocacy, I learned how to persuasively write legal arguments with careful attention to detail. As a law clerk on the Senate Judiciary Committee, I sharpened my skills by researching and drafting memoranda to support hearings on civil rights and constitutional issues. My work as an intern and pro bono advocate with Philadelphia Legal Assistance taught me how to collaboratively develop case strategies and manage a client caseload. I further developed my advocacy and organizational skills during my third year through representing indigent clients in the Interdisciplinary Child Advocacy Clinic and serving as an Executive Editor of the Journal of Law and Social Change.

I enclose my resume, transcript, and writing sample. Letters of recommendation from Professor Serena Mayeri ([smayeri@law.upenn.edu](mailto:smayeri@law.upenn.edu); 215-898-6728) and Julia Simon-Mishel, Esq. ([jsimonmishel@philalegal.org](mailto:jsimonmishel@philalegal.org); 240-476-8799) are also included in this packet. Please let me know if any additional information would be useful. Thank you.

Respectfully,

*Sabrina Merold*

Sabrina Merold

**Sabrina Merold**

18 Sherbrooke Drive Florham Park, NJ 07932  
smerold@pennlaw.upenn.edu | (973)-820-6303

**EDUCATION**

**University of Pennsylvania Law School, Philadelphia, PA**

Juris Doctor, May 2020

*Honors:* Executive Editor, *Journal of Law and Social Change*  
 2020 Recipient, Exemplary Pro Bono Service Award for Completing 350+ Hours of Pro Bono Work  
 2020 Recipient, Philadelphia Bar Association's Eve Kloth Biskind Law Student Award for Public Service  
 Member, Penn Law Service Corps  
 2019 Recipient, If/When/How: Lawyering for Reproductive Justice Cari Siestra Excellence in Organizing Award  
 Summer 2019 Recipient, Leo Model Government & Public Affairs Initiative Fellowship  
 Summer 2018 Recipient, Morgan Lewis Public Interest Fellowship  
 Received 2018 Penn Law Volunteer of the Year Award for Pardon Project Pro Bono Work

*Activities:* Civil Rights Law Project, *Co-Director (3L Year)*; *Research Editor (2L Year)*  
 If/When/How Lawyering for Reproductive Justice, *Director*  
 Pardon Pro Bono Project, *Advocate*  
 Employment Advocacy Pro Bono Project, *Advocate*  
 Equal Justice Foundation, *Fundraising Chair*

**Swarthmore College, Swarthmore, PA**

B.A., Sociology & Anthropology and Psychology with High Honors, May 2017

*Honors:* Phi Beta Kappa; Writing Associates Fellow; Global Nonviolent Action Database, Published Author  
*Thesis:* High Honors Thesis: *Performative Laws and the Restriction of Abortion in the United States*  
*Activities:* Anthropology Research Assistant; War News Radio; Women's Center Intern; Sexual Health Advocates

**EXPERIENCE**

**Center for Reproductive Rights, Washington, DC**

October 2020—

*Penn Law Public Interest Fellow*

Awarded a fellowship to work on access to reproductive health care and religious exemptions through federal policy and administrative advocacy. Provide support to litigation before trial and appellate courts.

**Senator Mazie Hirono, Washington, DC**

January-July 2020

*Judiciary Committee Law Clerk*

Conducted research and drafted memoranda to assist counsel with Judiciary Committee hearings on civil rights, constitutional issues, and judicial nominations. Drafted oversight letters to administrative agencies.

**The Lawyering Project, New York, NY**

September 2019-January 2020

*Legal Intern*

Assisted in drafting briefs for litigation challenging reproductive rights restrictions. Conducted legal research and wrote memoranda to support expert witness depositions, motion for summary judgment responses, and a brief in opposition to a motion to stay discovery.

**Interdisciplinary Child Advocacy Clinic, Philadelphia, PA**

September 2019-July 2020

*Certified Legal Intern*

Provided direct representation to clients in dependency and custody proceedings in Family Court and worked with clients seeking Special Immigrant Juvenile Status. Interviewed clients and prepared clients for hearing testimony. Developed case strategies and theories. Drafted affidavits and complaints and conducted research on novel procedural issues.

**Center for Reproductive Rights**, Washington, DC June-August 2019  
*Legal Intern, Federal Policy*

Drafted a complaint to the Office of Inspector General for the Department of Health and Human Services. Wrote sections of a comment on proposed changes to Section 1557 of the ACA. Developed policy and advocacy materials on the Women's Health Protection Act.

**National Institute for Reproductive Health**, New York, NY January-May 2019  
*Legal Intern*

Completed the internship through Penn Law's Legislative Clinic. Researched and wrote memoranda on state constitutional protections for abortion. Drafted state legislation on access to reproductive healthcare. Tracked pending legislation and conducted policy analysis of bills affecting reproductive rights on the state and federal level.

**University of Pennsylvania Law School**, Philadelphia, PA November 2018-May 2019  
*Research Assistant for Law & Psychology Professor Tess Wilkinson-Ryan*

Conducted research for and edited a book chapter on moral decision-making in the fiduciary relationship.

**Women's Law Project**, Philadelphia, PA August-December 2018  
*Legal Intern*

Helped draft a motion to dismiss for a sex discrimination case. Conducted research for amicus briefs on sexual violence in custodial settings and on standby counsel in sexual assault cases. Observed oral argument in two Third Circuit cases. Tracked pending legislation and drafted policy analysis of state bills on workplace equity.

**Philadelphia Legal Assistance**, Philadelphia, PA June 2018-January 2020  
*Public Benefits Unit Intern (June-August 2018) & Employment Advocacy Project Pro Bono Volunteer (September 2018-January 2020)*

Represented low-wage workers in unemployment compensation matters. Researched and drafted appellate briefs for two clients and sections of an appellate brief on the due process rights of workers in hearings. Interviewed clients, developed case strategies, and argued on behalf of ten clients as their legal advocate in administrative hearings. Wrote formal strategy memoranda for legal aid attorneys statewide on appealing denials under unemployment compensation law. Continued to write appellate briefs and represent clients during my 2L and 3L years through the Employment Advocacy Pro Bono Project.

**Women's Medical Fund**, Philadelphia, PA September 2016-December 2018  
*Access Counselor*

Served on the Fair Workweek Planning Committee; worked with Philadelphia Councilwoman Helen Gym's office to pass the Fair Workweek legislation, creating a family-sustaining workweek for low-wage workers.

**Swarthmore College**, Swarthmore, PA June 2015-May 2017  
*Research Assistant to Anthropology Professor Farha Ghannam*

Conducted research for and helped draft the article: Farha Ghannam, When He is "Tied": Power, Vulnerability, and Embodied Masculinity in Egypt, 25 Reproductive Health Matters S56 (2017).

**Swarthmore College Writing Associates Fellowship**, Swarthmore, PA September 2014-May 2017  
*Recipient*

Individually mentored a class of twenty students each semester on their writing and presentation skills.

## LANGUAGES & INTERESTS

Working proficiency in French; Listening to podcasts, baking, and musical theater

**Sabrina Merold**  
**University of Pennsylvania Law School**  
**Cumulative GPA: Penn Law does not provide GPA information.**

**Fall 2017**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	Professor Tess Wilkinson-Ryan	A-	4.00	
Legal Practice Skills Cohort	Danielle Sekerak	CR	0.00	
Legal Practice Skills	Professor Alison Kehner	H	4.00	
Torts	Professor Eric Feldman	B+	4.00	
Civil Procedure	Professor Stephen Burbank	B+	4.00	

**Spring 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Professor Sophia Lee	B+	3.00	
Reproductive Rights and Justice	Professor Dorothy Roberts	A+	3.00	
Criminal Law	Professor Paul Robinson	B	4.00	
Legal Practice Skills Cohort	Danielle Sekerak	CR	0.00	
Legal Practice Skills	Professor Alison Kehner	H	2.00	
Constitutional Law	Professor Maggie Blackhawk	B	4.00	

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Study (Journal of Law and Social Change)		CR	1.00	
Appellate Advocacy	Professor Brett Sweitzer	A-	3.00	
Church & State in America: Contemporary & Historical Perspectives	Professor Sarah Barringer Gordon	A	3.00	
Journal of Law and Social Change - Associate Editor		CR	1.00	
Employment Discrimination	Professor Serena Mayeri	A	3.00	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legislative Clinic	Professor Lou Rulli	A	6.00	

Independent Study	Professor Dorothy Roberts	A	1.00
Black Lives Matter in Historical Perspective	Professor Sophia Lee	A-	3.00
Professional Responsibility in Public Interest Practice	Professor Miriam Enriquez	A	2.00
Journal of Law and Social Change - Associate Editor		CR	0.00
Federal Courts	Professor Catherine Struve	A-	4.00

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Criminal Procedure	Professor David Rudovsky	A-	3.00	
Journal of Law and Social Change - Executive Editor		CR	0.00	
Interdisciplinary Child Advocacy Clinic	Professor Kara Finck	A-	7.00	
Interdisciplinary Perspectives on Law and Family	Professor Serena Mayeri	A	3.00	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Power & Privilege in Public Service	Professor Neta Borshansky	CR	3.00	
Advanced Legislative Clinic	Professor Lou Rulli	CR	6.00	
Advanced Child Advocacy Clinic	Professor Kara Finck	CR	1.00	
Evidence	Professors David Rudovsky and Michael Levy	CR	4.00	
Labor Law	Professor Sean Burke	CR	2.00	

In light of the COVID-19 pandemic, Penn Law adopted a mandatory Credit/Fail grading policy for Spring 2020.

**Grading System Description**

Apart from the grades of A+ and F, the grades to be awarded in typical circumstances in moderate- to large-sized upper-level classes shall approximate the following distribution: the top 15% in the A category (including the grades of A+), the next 20% in the A- category, followed by 27.5% in the B+ category, 32.5-37.5% in the B category, and 0-5% in the B- category (including the grades of C and F).

The grade of A+ is reserved for students whose performance reveals an extraordinary measure of mastery of the course materials, outstanding creativity and sophistication in legal analysis, and an overall ability setting the student apart from the best papers in the A category. In many courses, no A+ grade is awarded; in a class of typical size, there may be one or two.

The 1L Legal Practice Skills course is graded on an honors/pass/fail basis. For the classes of 2013 on, it has been awarded to up to 30% of the class.

A course or co-curricular program which does not lend itself to the alphabetic system may be graded simply as Credit, Fail or Fail-No Credit (abbreviated CR, F and FNC).

**Sabrina Merold**  
**Swarthmore College**  
**Cumulative GPA: 3.98/4.00**

**Fall 2013**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Cellular & Molecular Biology	Professor Elizabeth Vallen	CR	1.00	
Security and Defense	Professor George Lakey	CR	1.00	
First Year Seminar: Picasso	Professor Constance Hungerford	CR	1.00	
Culture, Health, Illness	Professor Christy Schuetze	CR	1.00	

**Spring 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Cognitive Science	Professor Daniel Grodner	A	1.00	
Statistical Methods	Professor Scott Cook	A-	1.00	
Introduction to Psychology	Professor Andrew Ward	A	1.00	
First Year Seminar: Introduction to Education	Professor Sarah Costelloe	A	1.00	

**Fall 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Anthropology & Sociology	Professor Sarah Willie-LeBreton	A	1.00	
Research: Design and Analysis	Professor Jodie Baird	A	1.00	
Thinking, Judgment, and Decision Making	Professor Barry Schwartz	A	1.00	
Writing Pedagogy	Professor Jill Gladstein	CR	1.00	

**Spring 2015**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Comparative Perspectives on the Body Honors Seminar Attachment	Professor Farha Ghannam	A	1.00	
Independent Research	Professor Daniel Grodner	A	1.00	
Comparative Perspectives on the Body	Professor Farha Ghannam	A	1.00	
Methods of Social Exploration	Professor Michael Reay	A	1.00	



Advanced French	Professor Jean-Vincent Blanchard	CR	1.00	
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#### Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Study Project	Professor Alexandre Lambert	A	1.00	
Perspectives on Global Health	Professor Heikki Mattila	A	0.75	
Research Methods & Ethics	Professor Heikki Mattila	A	0.75	
Development Policy & Health	Professor Heikki Mattila	A	0.75	
Intermediate French II	Professor Alexandre Lambert	A	0.75	

Studied abroad in the Fall of 2015 through SIT Global Health, Development, and Policy in Switzerland and Morocco. For my Independent Study Project, I researched and published a paper entitled "Tracing the Human Right from Law to Policy to Reproductive Healthcare: Exploring the Strengths and Shortcomings of Undocumented Migrant Women's Access to Reproductive Healthcare in Switzerland."

#### Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Research	Professor Daniel Grodner	A	1.00	
Humanitarianism: Anthropological Approaches	Professor Sa'ed Atshan	A	2.00	
Ethnic Politics	Professor Mark Schneider	CR	1.00	
Geographic Information System for Public Health	Professor Ganapathy Narayanaraj	A	1.00	

#### Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Thesis Writers Master Class	Professor Farha Ghannam	S	0.00	
Independent Study	Professor Christy Schuetze	W	1.00	
Psychology of Language	Professor Daniel Grodner	A	1.00	
Senior Honors Thesis	Professor Farha Ghannam	A	1.00	
Research Practicum: Language & Mind	Professor Daniel Grodner	A	1.00	

#### Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Senior Honors Thesis	Professor Farha Ghannam	A	1.00
Seminar: Psycholinguistics	Professor Daniel Grodner	A	1.00
Anthropology of Biomedicine	Professor Christy Schuetze	A-	2.00

Awarded Phi Beta Kappa; Graduated with High Honors; Senior Sociology Thesis Awarded High Honors.

### Grading System Description

#### Credit/No Credit Grading

Since 1968, by College policy, all first year first semester courses receive only Credit/No Credit (CR/NC) grading. After the first semester, students may elect to take up to four more courses graded on the CR/NC basis. Since Fall 2018, in mandatory first semester CR/NC courses, D minus or better is required for CR credit, and in the four more optionally elected CR/NC courses, C minus or better is required for CR credit while any D minus, D or D plus grade shows on the transcript. From Fall 1968 to Spring 2018, for first-year students and sophomores, straight D or better work was required for CR credit in CR/NC courses; for juniors and seniors, straight C or better work was required for CR credit.

#### Grades

A+, A, A-, excellent; B+, B, B-, good; C+, C satisfactory; C-, D+, D, D-, passing, but below the average required for graduation; CR, credit, no specific grade assigned; NC, no credit (work unsatisfactory or uncompleted); NR, grade not reported; IP, work in progress; INC, incomplete; R, audit, no credit; S, requirement satisfactorily fulfilled; W, withdrawn; X, conditioned. From 1997 to 1999, the senior honors study course was graded H, honors; HH high honors; or HHH, highest honors. Prior to 1997, a single asterisk \*\* indicated ungraded credits earned for honors work; students who earned honors did so because this work was very good to excellent. Prior to Spring 1973, plus and minus were not used. Prior to Fall 1971: P, passed; E, failed. Grades followed by an asterisk indicate that the letter or numeric grade was earned elsewhere.

#### Credit for Work Done Elsewhere

Credit for work done elsewhere has been awarded by Swarthmore faculty in the department or program within whose discipline the work was completed. In most cases, credit is based on work submitted by the student.

#### Honors Notations

The Honors program: Since 1923, Swarthmore College has awarded three levels of honors: Honors, High Honors, and Highest Honors; the level of honors being determined at the end of the senior year by external examiners using their own written and oral Honors examinations of the students. Since 1997, honors candidates prepare 8 credits of honors work, which is graded.



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WWW.PHILALEGAL.ORG

June 10, 2020

Dear Judge:

I am pleased to provide a letter of recommendation on behalf of Sabrina Merold. Sabrina was an intern in the Public Benefits Unit, now the Unemployment Compensation Unit, at Philadelphia Legal Assistance during the summer of 2018. She has also continued her work with my unit throughout her time at law school. Philadelphia Legal Assistance (“PLA”) is the federally funded civil legal aid provider for Philadelphia’s indigent community. We provide high volume, high quality legal services through advice, *pro se* assistance, and full representation in areas of basic human needs: family safety; health; income maintenance; and home preservation. During the course of her work, Sabrina has handled her own client case load and assisted unit attorneys with legal research, writing, and investigation. Sabrina’s diligent and thoughtful work helped her clients retain stability during times of major life crisis.

As the Supervising Attorney of the Unemployment Compensation Unit, I trained Sabrina and assigned her a wide variety of cases and challenging legal tasks. I can confidently say she handled each one with a level of maturity and sophistication well beyond her years. During her time at PLA, Sabrina’s primary responsibility was to represent low-wage workers in unemployment compensation cases. These cases typically involved two stages: (1) administrative hearings and (2) written appeals to an agency review board. In advance of the administrative hearings, Sabrina had to investigate cases, synthesize facts, craft legal strategy, and prepare her clients for court. Her work involved distinguishing between the relevant, and often dispositive, facts of a client’s case and what was often a watershed of personal employment experiences. In the hearings, Sabrina sharpened her oral advocacy skills by learning how to direct her clients and cross-examine numerous employer witnesses, often with little notice of who would be testifying on behalf of the employer. As part of her training, Sabrina learned the basics of the Rules of Evidence and then used them in her hearings to present, and protect, her clients’ cases in an effective manner.

Sabrina drafted and filed several appeals to the Unemployment Compensation Board of Review during her summer internship, as well as during the 2018-2019 and 2019-2020 school years. These briefs required the development of a persuasive narrative paired with a keen analytical approach that could catch the attention of an overloaded agency review board. Throughout the summer she improved her ability to clearly and concisely construct her argument, both in her conversation with supervisors and in her appeal briefs. As a result of her excellent briefs, the agency review board overturned the hearing officer and granted benefits to several of Sabrina’s clients.

Page 2 of 2

In addition to researching and writing her own briefs, Sabrina completed several research memos to assist with my state appellate litigation. She demonstrated a quick understanding of the legal questions presented and provided in-depth, and at times innovative, research memos. During this research, Sabrina respectfully engaged in legal strategy conversations with supervisors and took direction and critical feedback with a high level of professionalism. She knew when to ask questions and when, importantly, she could figure out answers on her own. Sabrina also always completed her work in a timely manner and never missed a deadline.

I have supervised over 80 law students during my time at PLA. Sabrina's legal reasoning and written work is some of the strongest I have seen from a law student. Not only is her legal work product well-written and organized, but her attention to detail and synthesis of complex questions of law is superb. Her clear thinking and concise writing style rivals that of many lawyers with whom I work. Throughout her involvement with PLA, Sabrina was self-motivated, demonstrated strong communications skills, and showed impressive legal acumen.

Sabrina, in addition to being a fantastic advocate and intellectually sophisticated researcher, is also a wonderful person. She has a kind and caring demeanor that shined through her interactions with clients and also brought a sense of comfort to everyone that worked with her. Sabrina has a high level of enthusiasm for her work and cares deeply about helping at-risk populations. She quickly developed a positive working relationship with her co-intern that remained strong throughout the summer. Towards the end of her internship, we on-boarded a new paralegal in our unit and Sabrina immediately made him feel welcome and helped him adjust to his new position.

It has been a great pleasure working with Sabrina. I regret that we did not have the resources to hire her right out of law school, as I cannot imagine a law student better equipped to hit the ground running. I am sure that her experience next year as a fellow working on federal litigation will only further prepare her for a clerkship in your chambers. I have no doubt that she has a bright legal future ahead of her.

As a former law clerk in the Eastern District of Pennsylvania, I know that Sabrina has the analytical, interpersonal, and organizational skills to make her an excellent candidate for a clerkship in your chambers. I believe that Sabrina would only continue to grow and improve during a clerkship under your honor's mentorship. I am pleased to strongly recommend Sabrina for a judicial clerkship. If you have any questions or require additional information, please contact me at (267) 437-7552.

Respectfully,



Julia Simon-Mishel  
Supervising Attorney

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

August 24, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Re: Clerkship Applicant Sabrina Merold

Dear Judge Hanes:

It is with the greatest enthusiasm that I write to recommend Sabrina Merold for a clerkship in your chambers. She already has launched a distinguished career in public interest law and has won awards and fellowships recognizing her ability and promise. Ms. Merold's prodigious intellect, talent for research and writing, work ethic, and dedication are the qualities of an excellent law clerk. Her warmth, kindness, open-mindedness, and professionalism make working with Sabrina a pleasure.

I came to know Ms. Merold when she enrolled in my Employment Discrimination course in the Fall of 2018. Throughout the semester, her thoughtful engagement with the course material was evident; she consistently came to class prepared and asked probing questions about the material. Grades in my course are based almost entirely upon an anonymously graded, two-part, 24-hour takeaway examination. The first part of the exam is a complicated fact pattern that requires students to identify and analyze legal claims, and to make compliance recommendations to a hypothetical employer. The second is a more open-ended essay question that invites students to make descriptive and normative judgments about the field of employment discrimination law.

Ms. Merold's performance on both parts of the exam was excellent. She is a superb writer, with a succinct, sophisticated yet accessible style. Substantively, her answers demonstrated mastery of the material as well as an ability to think creatively and deeply about questions of law and policy. Among an unusually capable group of students, Ms. Merold received the highest score on the second part of the exam, and the second highest exam grade overall. She easily earned an A in the course.

I was delighted when Ms. Merold subsequently enrolled in my seminar, Interdisciplinary Perspectives on Law and the Family, in the fall of 2019. The seminar entails a demanding workload that includes responses to 100-150 pages of weekly readings, active participation in class discussions, and a substantial final research paper. Ms. Merold excelled along each of these dimensions. Her response papers and discussion questions demonstrated a deep understanding of the material and an ability to digest and evaluate sources from disciplines including sociology, history, political science, anthropology, and economics as well as law. She contributed insightful comments to our discussions, and invariably came to class impeccably prepared despite her heavy academic and co-curricular workload. Ms. Merold wrote an excellent paper for her final project, investigating parental involvement laws for minors who consider terminating a pregnancy. The project requires extensive research into state and federal law, and Ms. Merold's meticulously sourced and beautifully written paper easily earned an A.

Ms. Merold's research and writing skills have received recognition and accolades. She graduated from Swarthmore College with High Honors, and earned Honors in her 1L research and writing course. She serves as a research assistant for Professor Tess Wilkinson-Ryan, investigating behavioral economics and the psychology of trust. Professor Sarah Barringer Gordon has selected her to be a Research Assistant and a Teaching Assistant for her rigorous course on Church and State, based on Ms. Merold's excellent performance in her seminar. Her co-curricular activities have also allowed her to hone her research and writing abilities. As a research editor for the Civil Rights Law Project, she has conducted research for the NAACP Legal Defense Fund and for the ACLU, and overseen the research and writing of other student volunteers.

Ms. Merold has already gained a wealth of experience representing clients in administrative hearings and participating in various aspects of the litigation process. As an intern representing low-income individuals with Philadelphia Legal Assistance, and as a volunteer with the Employment Advocacy Project, Sabrina has represented clients in unemployment compensation hearings, with supervision but largely on her own. She has developed case strategies, argued on behalf of clients, and conducted direct and cross-examination of witnesses. She has also researched and drafted appellate briefs on clients' behalf. Her experience with clients who experienced pregnancy-based discrimination led Sabrina to pursue an internship with the Women's Law Project, working on impact litigation concerning sex and gender discrimination in the workplace. She also has interned with the Lawyering Project, where she researched and drafted briefs in litigation challenging restrictions on reproductive rights.

Clinical work has exposed Ms. Merold to a wide range of law and policy matters. After a semester in the intensive and

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

demanding Interdisciplinary Child Advocacy Clinic, she continued her work on a Special Immigrant Juvenile Status case. She was the first student to enroll in the Advanced Legislative Clinic, and spent the spring of her 3L year interning for Senator Mazie Hirono on the Senate Judiciary Committee. Ms. Merold has also taken a leadership role in advocacy for reproductive health and justice on campus, and in state and federal organizations. She will spend her post-graduate year continuing her longtime work with the Center for Reproductive Rights on a Penn Law fellowship.

Ms. Merold's dedication to public interest law and to serving her community stands out even in a law school full of devoted and passionate students. To give just one example, for over a year, she met every other week with an incarcerated client to work on a pardon application, and her dedication was recognized with an Outstanding Volunteer Award from the Toll Public Interest Center. She has received recognition from the Philadelphia Bar Association for Exceptional Pro Bono Engagement. Ms. Merold is also a devoted institutional citizen, serving as fundraising chair for the Equal Justice Foundation, which raises money to fund students' summer public interest work.

Despite the astonishing range, depth, and magnitude of Ms. Merold's academic and co-curricular commitments, she performs at a first-rate level in every domain. In the two years I have known Sabrina, I have never seen her sacrifice quality for quantity. She rises to personal and professional challenges with grace and aplomb. She brings to her work a remarkable sensitivity and warmth that will serve her very well in interacting with colleagues and clients. She is engaging, kind, empathetic, humble, and open-minded—truly a pleasure to be around. In short, Sabrina Merold's application for a judicial clerkship has my strongest endorsement.

Thank you very much for your consideration. If I can provide any further information or assistance, please do not hesitate to contact me.

Sincerely,

Serena Mayeri  
Professor of Law and History  
Tel.: (215) 898-6728  
E-mail: smayeri@law.upenn.edu

**Sabrina Merold**

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**WRITING SAMPLE**

The attached writing sample is an appellate brief I drafted during my 2L year as an Employment Advocacy Project Pro Bono Volunteer. The Employment Advocacy Project is supervised by Philadelphia Legal Assistance attorney Julia Simon-Mishel. The assignment was to write a brief to the Unemployment Compensation Board of Review challenging the Referee's Decision denying claimant unemployment compensation benefits based on a finding that the claimant voluntarily quit his job.

I performed all of the research and wrote the brief. I discussed legal argument strategy for the brief with Ms. Simon-Mishel, but I did not receive any edits on the brief. Ms. Simon-Mishel is one of my recommenders. She can be reached at (240)-476-8799 or [jsimonmishel@philalegal.org](mailto:jsimonmishel@philalegal.org).

To preserve client confidentiality, all individual names and locations have been changed. I am submitting the attached writing sample with the permission of Philadelphia Legal Assistance.

Unemployment Compensation Board of Review  
Room 1116, Labor & Industry Building  
651 Boas Street  
Harrisburg, PA 17121-0001

March 12, 2019

**Claimant:** Joe Smith<sup>1</sup>  
**Appeal:** 00-00-X-XX00

Dear Members of the Board:

I am a non-legal advocate representing Mr. Joe Smith. Please accept this letter as a brief in support of his appeal of the Referee's decision on December 28, 2018, finding him ineligible for benefits under Section 402(b).

This brief argues that Mr. Smith's due process rights were violated when his Referee hearing preceded without the Spanish-interpreter he had requested. As Mr. Smith was denied a full and fair hearing, the Board of Review should grant a remand hearing. Further, Mr. Smith voluntarily quit his job for necessitous and compelling health reasons. Therefore the Referee erred and misapplied the law in finding that Mr. Smith was ineligible for benefits under Section 402(b).

**I. Statement of Facts**

Mr. Smith had been a Maintenance Worker at Jay's Auto Group for four years when he had to voluntarily quit his job for health reasons on October 22, 2018. Transcript of Testimony at 4-5 (2018) [hereafter Trans.]. Mr. Smith is a Spanish speaker. Before the hearing, Mr. Smith requested a Spanish-interpreter and Accent Interpreting Service was included as an additional interested party on the Notice of Hearing. Notice of Hearing (December 3, 2018).

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<sup>1</sup> To protect client confidentiality, all names of individuals and organizations have been changed to aliases.



At the hearing, the Referee noted that “we have an interpreter here on the Notice, but there is no interpreter here. Did you need...”. Trans. at 2. Mr. Smith responded, “If not, I’ll ask for one.” *Id.* The Referee then attempted to verify with Mr. Smith “that we do not have an interpreter and that’s okay.” *Id.* Before receiving an answer from Mr. Smith, the Referee went right into explaining his rights under Unemployment Compensation Law and asked him, “Do you understand your rights, Mr. Smith?”. *Id.* Mr. Smith responded, “Yes.” *Id.*

Mr. Smith was not represented at the hearing by an attorney or a non-legal advocate. Throughout the hearing, Mr. Smith continued to respond before the Referee had fully asked a question. *Id.* at 3; 11-13. The Referee asked Mr. Smith, “Did you have an opportunity to review the...” to which Mr. Smith responded, “Yes.” *Id.* at 3. Mr. Smith responded before the Referee was able to say, “The files in the hearing file.” *Id.* When asked by the Referee whether the separation was a voluntary quit or a leave of absence, Mr. Smith continued to respond by saying, “I just couldn’t do the job.” *Id.* at 5. After repeatedly receiving the same answer, the Referee stated, “That’s not answering. It’s a really simple question. Why is October 22<sup>nd</sup>, 2018 your last day of work.” *Id.* To this question, Mr. Smith again responded, “I couldn’t work no more.” *Id.*

On July 17<sup>th</sup>, 2018, Mr. Smith was instructed by his cardiologist to remain out of work for “at least the next 3 months” due to ongoing cardiac issues. Cardiology Doctor’s Note [hereafter Doctor’s Note]. While he was out of work on FMLA leave, claimant had heart surgery. Trans. at 8. Claimant also previously had three operations placing stents in his legs. *Id.* at 7. When Mr. Smith returned to work on October 10<sup>th</sup>, 2018, the day after his FMLA leave ended, he was informed that his maintenance job had been eliminated and he was offered a valet position. *Id.* at 10-11. Mr. Smith received a doctor’s note to return back to his maintenance job without any restrictions and was informed by his doctor to “not be stupid. Like, over exaggerate myself.” *Id.*

Mr. Smith provided his employer with the doctor's note and went to work in the new valet position where he was doing a lot of walking and "getting in and out of the cars" in comparison to his old position where there was only "a little bit of walking." *Id.* at 8-10. After about a week, Mr. Smith realized he could not do the change in job duties because "my legs wouldn't let me" and he was having "chest pains." *Id.* at 5; 10; 12. According to Jay's Auto Group's Controller, Mr. Frank Scott, claimant could no longer do the work because "it would kill him." *Id.* at 6.

Mr. Smith informed his employer that he could not handle the valet job and stated that "[he] asked for light duty work" from Mr. Scott and his Project Manager, Mr. Mike Taylor. *Id.* at 5-6; 10-11; 14. Mr. Scott and Mr. Taylor told Mr. Smith that the valet job was the "only job we have available and it's the least demanding job that we have available" where claimant could be full-time. *Id.* at 14. After notifying his employer on October 22<sup>nd</sup>, 2018 that he could not do the job, he went home for the day and did not return back to work. *Id.* at 5; 14. According to Mr. Taylor, he informed Mr. Smith that if he could not do the job, he should get a doctor's note with his restrictions. *Id.* at 14. Mr. Taylor testified that he gave the claimant no time frame to get the doctor's note and never received a note from the claimant, which he took as claimant's resignation. *Id.*

When asked by the Referee "was there an understanding that you would get more information from your doctor on what you can and can't do?," claimant responded, "Never. He just – everything's in the file, his file." *Id.* at 15. The Referee tried to follow up with the claimant and asked, "So, did he ask you to...," but before the Referee could state what the question was about, the claimant responded, "Yes." *Id.* Mr. Smith also testified that Mr. Scott and Mr. Taylor informed him, "If you can't do the job, you should have no problem getting compensation." *Id.* at 5; 15.

Following the hearing, at which Mr. Smith and two employer witnesses testified, the referee found that claimant did not establish a “necessitous and compelling reason for leaving employment at the time the claimant did or that the claimant acted with ordinary common sense and made a good faith effort to preserve the employment.” Referee’s Decision/Order (December 28, 2018). The referee noted that claimant informed his employer that he could not complete the tasks of the new job. *Id.* Further, the referee found that “claimant acknowledged that his employer requested a new note from his doctor outlining the current medical restrictions.” *Id.*

## **II. Argument**

### **A. Mr. Smith’s Due Process Rights Were Violated When the Hearing Proceeded Without the Spanish-Interpreter He Requested.**

Due process of law must be afforded in all administrative agency hearings. *See Knox v. Com., Unemployment Comp. Bd. of Review*, 317 A.2d 60, 62 (Pa. Commw. Ct. 1974). The Commonwealth Court has remanded or reversed where a citizen in an administrative agency hearing was not afforded all of his due process rights. *See Kentucky Fried Chicken of Altoona, Inc. v. Unemployment Comp. Bd. of Review*, 309 A.2d 165, 168 (Pa. Commw. Ct. 1973). The right to be heard, which encompasses the right to aid from an interpreter during an administrative proceeding, is included in “the constitutionally protected rights afforded by due process, which apply to administrative proceeding[s].” *Bethlehem Area Sch. Dist. v. Zhou*, 976 A.2d 1284, 1286 (Pa. Commw. Ct. 2009) (citing *Commonwealth v. Pana*, 364 A.2d 895 (Pa. 1976); *Gonzalez v. Com., Unemployment Comp. Bd. of Review*, 395 A.2d 292 (Pa. Commw. Ct. 1978)).

Mr. Smith’s right to be heard in his proceeding was violated when the Referee hearing was conducted without the Spanish-interpreter he had requested. The Commonwealth Court has stated that a Referee hearing fails to meet the demands of due process if the claimant demonstrates “either a specific deprivation of his rights or a lack of fairness that tainted the entire

proceeding.” *Gonzalez v. Comm., Unemployment Comp. Bd. of Review*, 395 A.2d 292, 295 (Pa. Commw. Ct. 1978). In *Gonzalez*, the claimant, “who speaks only Spanish,” argued that he “was denied a full and fair hearing because of inadequate interpretive services.” *Id.* The Court looked to the record to see if the translator “ever refused a request by Claimant to translate or explain,” if the “translator was incompetent,” or if the “referee in any way impeded Claimant’s ability to utilize the translator’s skills.” *Id.* As the record revealed that the claimant “was allowed access to, and permitted to testify through, a translator who was present throughout the entire proceeding,” the Court held that the interpreter’s skills met the demands of due process. *Id.*; see also *Moran v. Comm., Unemployment Comp. Bd. of Review*, 427 A.2d 303, 304-5 (Pa. Commw. Ct. 1981) (relying on *Gonzalez* to reject claimant’s argument that he was denied a full and fair hearing when he used his own interpreter, not an official interpreter, because the record did not indicate that the translator ever refused a request by claimant to translate, “was incompetent, or the claimant’s use of the translator[’s] skills was impeded.”).

Further, when a claimant has argued after the hearing that there was a language barrier issue during the hearing, the Commonwealth Court has evaluated the claim based on whether the claimant requested an interpreter for the hearing and whether the transcript indicates the claimant had any difficulty. See *Botikotiko v. Unemployment Comp. Bd. of Review*, No. 873 C.D. 2018, 2019 WL 97832 (Pa. Commw. Ct. Jan. 4, 2019). In *Botikotiko*, the claimant argued he was unable to participate fully in the Referee hearing because he “was at many times unable to express himself during the hearing” due to a language barrier, as English is his second language. *Id.* at \*5. The Board considered claimant’s request for a new hearing because of the language barrier and found that he was not entitled to a new hearing because the “claimant was apprised on the notice of hearing to contact the Referee’s office if he needed an interpreter. He did not do

so.” *Id.* The Court reaffirmed the Board’s finding because the transcript did not reveal that claimant experienced any communication difficulties. *Id.* at \*6. The Court also noted that the claimant failed to both “raise any issue regarding the need for an interpreter” during the hearing and offered “no specific examples as to how any purported language difficulty obstructed his ability to fully present his case before the referee.” *Id.*

By contrast, here, Mr. Smith requested a Spanish-interpreter before the hearing. *See* Notice of Hearing. The Referee impeded Mr. Smith’s ability to utilize the interpreter’s skills because the hearing proceeded without the Spanish-interpreter the claimant had requested. There was never clear confirmation that claimant could fully participate in the hearing without the interpreter. If anything, the claimant confirmed he needed an interpreter. Referee noted that “we have an interpreter here on the Notice, but there is no interpreter here. Did you need...”. Trans. at 2. Mr. Smith responded, “If not, I’ll ask for one.” *Id.* The Referee did not follow up with a question clarifying whether the claimant was again asking for an interpreter and whether he needed the interpreter he had requested for the hearing. The Referee only questioned, in English, whether claimant understood his rights to be represented and present testimony under Unemployment Compensation Law. *Id.*

The transcript of his hearing also reveals many instances of how he was obstructed from fully presenting his case because of his inability to understand what the Referee was asking him. Throughout the hearing, Mr. Smith quickly responded before the Referee had formed a question. *Id.* at 3; 7; 8; 11; 12; 13. He also responded with the same response that he “couldn’t do the job” when repeatedly asked by the Referee whether the nature of the separation was a voluntary quit or a leave of absence. *Id.* at 5. All of these instances in the transcript indicate that he did not fully understand what he was responding to and had communication difficulties in the hearing. Unlike

*Gonzalez, Moran, and Botikotiko* where the Commonwealth Court found due process rights were not violated, Mr. Smith's hearing transcript reveals a specific deprivation of his right to be heard that impacted his ability to have a full and fair hearing.

**B. Mr. Smith Provided Competent Evidence that He Voluntarily Quit His Job Due to Health Reasons and His Inability to Complete the Duties of the New Position.**

Mr. Smith provided competent testimony at the hearing to meet his burden that he voluntarily quit his job for necessitous and compelling health reasons. The Supreme Court of Pennsylvania has clearly established that "medical problems can create necessitous and compelling cause to leave employment" within the meaning of Section 402(b). *Deiss v. Unemployment Comp. Bd. of Review*, 381 A.2d 132, 135 (Pa. 1977). For a claimant to establish health problems as a compelling reason to quit, the claimant must (1) "offer competent testimony that adequate health reasons existed to justify the voluntary termination, (2) have informed the employer of the health problems and (3) be available to work if reasonable accommodations can be made." See *Lee Hosp. v. Unemployment Comp. Bd. of Review*, 637 A.2d 695, 698 (Pa. Commw. Ct. 1994) (citing *Genetin v. Unemployment Comp. Bd. of Review*, 451 A.2d 1353 (Pa. 1982)). The claimant can establish his compelling reason for voluntarily quitting using "any competent evidence," which "may consist of the claimant's own testimony and/or documentary evidence." See *Steffy v. Com., Unemployment Comp. Bd. of Review*, 45 A.2d 591, 594 (Pa. 1982). The Supreme Court of Pennsylvania has held that the "claimant does not necessarily have to present expert medical evidence in order to establish that he had compelling medical reasons." *Id.* If the claimant fails to establish any one of the three requirements, he is barred from receiving unemployment compensation. *Lee Hosp.*, 637 A.2d at 698.

Once an employee communicates to his employer his inability to perform his regular duties because of his medical condition and remains available for suitable work, “the employee ha[s] demonstrated a good faith effort to maintain the employment relationship...and it is incumbent upon the employer to provide suitable work for the employee.” *Waste Mgmt. v. Unemployment Comp. Bd. of Review*, 651 A.2d 231, 236 (Pa. Commw. Ct. 1994). Further, the Commonwealth Court has held that if the employer cannot provide “suitable work for the employee, the employee’s subsequent voluntarily termination will be deemed the result of a necessitous and compelling cause.” *Id.*

Here, the testimony in the Referee hearing from both Mr. Smith and his employer and the documentary evidence of the July 17<sup>th</sup>, 2018 doctor’s note all establish that he made a good faith effort to maintain the employment relationship, meeting the Commonwealth Court’s three requirements for a necessitous and compelling voluntary health quit. First, the claimant testified that he returned to work the day after his three-month FMLA leave ended, during which time he had heart surgery. *See* Doctor’s Note; Trans. at 8; 10-11. Claimant previously had three operations on his legs. Trans. at 7. Mr. Smith stated that he was unable to perform the duties of the new valet position and the additional walking that the job required because “my legs wouldn’t let me” do it and he was having “chest pains and everything.” *Id.* at 5; 10-12. Mr. Scott testified that the claimant could not continue working in the valet position because “it would kill him,” supporting claimant’s testimony that adequate health reasons existed for the voluntary quit. *Id.* at 6.

Second, Mr. Smith also informed Jay’s Auto Group of his ongoing health problems. Claimant made his employer aware of his heart problems when he provided the employer with the July 17<sup>th</sup>, 2018 letter from his doctor, which indicated that he could not work for three

months due to ongoing cardiac issues. *See* Doctor’s Note; Trans. at 10-11. When claimant was experiencing chest and leg pains in his new valet position, after returning back from FMLA leave and trying the job for over a week, he informed Mr. Scott and Mr. Taylor that he could not perform the job. Trans. at 5-6; 10-11. Mr. Smith then asked Mr. Scott and Mr. Taylor “for light duty work.” Trans. at 14. Mr. Smith testified that he thought he was returning to his old maintenance position and performing “light duty work, which I was fine with,” thus meeting the third requirement that claimant was able and available to complete light duty work. *Id.* at 11.

Further, the transcript does not support the Referee’s finding that Mr. Smith acknowledged in the hearing that his employer requested a new doctor’s note detailing his medical restrictions. *Id.* at 15. When asked by the Referee if there was an understanding with his employer that he would get more information from his doctor, claimant stated, “Never. He just – everything’s in the file, his file.”<sup>2</sup> *Id.* Mr. Smith only testified in the hearing that he provided a doctor’s note to his employer after returning from FMLA leave, which indicated that he had no medical restrictions on returning to his previous position as a maintenance worker. *Id.* at 10-11. Even if Mr. Smith’s employer asked him to obtain an additional doctor’s note, his case is distinguishable from those where the Commonwealth Court found a claimant ineligible under Section 402(b) for failing to provide the employer with a doctor’s note specifying the claimant’s limitations.

In *Fox v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review*, the Commonwealth Court affirmed the Board’s decision finding claimant ineligible

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<sup>2</sup> As discussed in Section A, the Referee hearing proceeded without the Spanish-interpreter claimant had requested. In a follow up question on the additional doctor’s note, the Referee was only able to ask the claimant, “So, did he ask you to...”. Trans. at 15. Before the Referee could finish and indicate what the question was about, claimant immediately said, “Yes.” Trans. at 15. Claimant’s response should not be interpreted as an acknowledgment of the employer’s request for a doctor’s note, but as another example of the communication difficulties in the hearing.



under Section 402(b) where the claimant provided her employer with a doctor's note for her absence, but the doctor's note "did not contain a list of...limitations" and "[c]laimant never explained her limitations to Employer." 522 A.2d 713, 715 (Pa. Commw. Ct. 1987). The Court stated that the claimant had an obligation to communicate the medical problems because "only through communication can an employer be afforded an opportunity to accommodate a claimant's problem by offering suitable work." *Id.*; see also *Bonnani v. Comm., Unemployment Comp. Bd. of Review*, 519 A.2d 532, 548-49 (Pa. Commw. Ct. 1986) (finding claimant ineligible under Section 402(b) when she failed to provide employer with a more specific doctor's note because without knowing what "claimant can and cannot do," the "employer can[not] make a reasonable accommodation.").

Unlike *Fox* and *Bonnani*, Mr. Smith notified his employer of his medical conditions when he went on a three-month FMLA leave for heart surgery and told Mr. Scott and Mr. Taylor that he was experiencing chest and leg pains in the new valet position. See Doctor's Note; Trans. at 5-6; 10-11; 14. When Mr. Smith informed his employer that he needed "light duty work" and asked for his old maintenance position back because of his health, he was told that the maintenance position no longer existed. Trans. at 10-11; 14. Mr. Smith was also told that the valet job was the "only job we have available and it's the least demanding job that we have available" that is full-time. *Id.* Since Mr. Smith remained available for light-duty work and the employer could not provide him with suitable light-duty work, Mr. Smith demonstrated a good faith effort to maintain the employment relationship.

### **III. Conclusion**

For the aforementioned reasons, the claimant respectfully requests that the Board of Review grant a remand hearing for the claimant to have a full and fair hearing with a Spanish-

interpreter. The claimant also respectfully requests that the Board of Review reverse the Referee's decision and find the claimant eligible for benefits under Section 402(b) of the Pennsylvania Unemployment Compensation Law.

Respectfully submitted,

*Sabrina Merold*

Sabrina Merold  
Employment Advocacy Project  
The University of Pennsylvania Law School  
3501 Sansom Street  
Philadelphia, PA 19104

## Applicant Details

First Name **Sabrina**  
 Middle Initial **S**  
 Last Name **Merold**  
 Citizenship Status **U. S. Citizen**  
 Email Address [smerold@pennlaw.upenn.edu](mailto:smerold@pennlaw.upenn.edu)  
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**07932**  
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**United States**

Contact Phone Number **9738206303**

## Applicant Education

BA/BS From **Swarthmore College**  
 Date of BA/BS **May 2017**  
 JD/LLB From **University of Pennsylvania Law School**  
<https://www.law.upenn.edu/careers/>  
 Date of JD/LLB **May 20, 2020**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Journal of Law and Social Change**  
 Moot Court Experience **No**

## Bar Admission

Admission(s) **District of Columbia**

## Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

### Recommenders

Julia, Simon-Mishel  
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Mayeri, Serena  
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215-898-6728

### References

Katherine Gillespie, Acting Director Federal Policy and Advocacy,  
Center for Reproductive Rights (202-524-5534,  
kgillespie@reprorights.org); Christine Berger, Chief Counsel, Senator  
Mazie Hirono (562-650-7115, christine\_berger@hirono.senate.gov);  
Kara Finck, University of Pennsylvania Law School Practice Professor  
of Law, Director of Interdisciplinary Child Advocacy Clinic  
(718-902-6812, kfinck@law.upenn.edu)

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

**Sabrina Merold**

18 Sherbrooke Drive Florham Park, NJ 07932  
[smerold@pennlaw.upenn.edu](mailto:smerold@pennlaw.upenn.edu) | (973)-820-6303

April 11, 2021

The Honorable Elizabeth W. Hanes  
United States District Court  
Eastern District of Virginia  
Spottswood W. Robinson III and Robert R. Merhige, Jr. United States Courthouse  
701 East Broad Street  
Richmond, Virginia 23219

Dear Judge Hanes:

I am writing to request your consideration of my application for a clerkship beginning in August 2022. I graduated from the University of Pennsylvania Law School in May 2020. I am currently a Penn Law Public Interest Fellow at the Center for Reproductive Rights in Washington, DC and plan to pursue a career as a civil litigator focused on advocating for civil rights and human rights. I would welcome the opportunity to learn from your experience not only as a judge, but also as a former federal public defender.

During law school, I worked to develop strong skills in legal research, analysis, and writing through courses, internships, clinics, and pro bono opportunities. Through my coursework in appellate advocacy, I learned how to persuasively write legal arguments with careful attention to detail. As a law clerk on the Senate Judiciary Committee, I sharpened my skills by researching and drafting memoranda to support hearings on civil rights and constitutional issues. My work as an intern and pro bono advocate with Philadelphia Legal Assistance taught me how to collaboratively develop case strategies and manage a client caseload. I further developed my advocacy and organizational skills during my third year through representing indigent clients in the Interdisciplinary Child Advocacy Clinic and serving as an Executive Editor of the Journal of Law and Social Change.

I enclose my resume, transcripts, and writing sample. Letters of recommendation from Professor Serena Mayeri ([smayeri@law.upenn.edu](mailto:smayeri@law.upenn.edu); 215-898-6728) and Julia Simon-Mishel, Esq. ([jsimonmishel@philalegal.org](mailto:jsimonmishel@philalegal.org); 240-476-8799) are also included in this packet. Please let me know if any additional information would be useful. Thank you.

Respectfully,

*Sabrina Merold*

Sabrina Merold

**Sabrina Merold**

18 Sherbrooke Drive Florham Park, NJ 07932\_  
smerold@pennlaw.upenn.edu | (973)-820-6303

**EDUCATION**

**University of Pennsylvania Law School, Philadelphia, PA**

Juris Doctor, May 2020

*Honors:* Executive Editor, *Journal of Law and Social Change*  
 2020 Recipient, Exemplary Pro Bono Service Award for Completing 350+ Hours of Pro Bono Work  
 2020 Recipient, Philadelphia Bar Association's Eve Kloth Biskind Award for Public Service  
 Member, Penn Law Service Corps  
 2019 Recipient, If/When/How: Lawyering for Reproductive Justice Cari Siestra Excellence in Organizing Award  
 Summer 2019 Recipient, Leo Model Government & Public Affairs Initiative Fellowship  
 Summer 2018 Recipient, Morgan Lewis Public Interest Fellowship  
 Received 2018 Penn Law Volunteer of the Year Award for Pardon Project Pro Bono Work

*Activities:* Civil Rights Law Project, *Co-Director (3L Year); Research Editor (2L Year)*  
 If/When/How Lawyering for Reproductive Justice, *Director*  
 Pardon Pro Bono Project, *Advocate*  
 Employment Advocacy Pro Bono Project, *Advocate*  
 Equal Justice Foundation, *Fundraising Chair*

**Swarthmore College, Swarthmore, PA**

B.A., Sociology & Anthropology and Psychology with High Honors, May 2017

*Honors:* Phi Beta Kappa; Writing Associates Fellow; Global Nonviolent Action Database, Published Author

*Thesis:* High Honors Thesis: *Performative Laws and the Restriction of Abortion in the United States*

*Activities:* Anthropology Research Assistant; War News Radio; Women's Center Intern

**EXPERIENCE**

**Center for Reproductive Rights, Washington, DC**

October 2020—

*Penn Law Public Interest Fellow*

Awarded a fellowship to work on access to reproductive health care and religious exemptions through federal policy and administrative advocacy.

**Senator Mazie Hirono, Washington, DC**

January-July 2020

*Judiciary Committee Law Clerk*

Completed the internship as Penn Law's first Advanced Legislative Clinic student. Conducted research and drafted memoranda to assist counsel with Judiciary Committee hearings on civil rights, constitutional issues, and judicial nominations. Drafted oversight letters to administrative agencies.

**The Lawyering Project, New York, NY**

September 2019-January 2020

*Legal Intern*

Assisted counsel with state and federal cases challenging laws that undermine reproductive rights and justice. Conducted legal research and wrote memoranda to support expert witness depositions, motion for summary judgment responses, and a brief in opposition to a motion to stay discovery.

**Interdisciplinary Child Advocacy Clinic, Philadelphia, PA**

September 2019-September 2020

*Certified Legal Intern*

Provided direct representation to parents in cases involving the child welfare system and clients seeking Special Immigrant Juvenile Status. Interviewed clients and prepared clients for hearing testimony. Developed case strategies and theories. Drafted affidavits, a complaint for custody, and an emergency petition, and conducted research on novel procedural issues.

**Center for Reproductive Rights, Washington, DC**

June-August 2019

*Legal Intern*

Drafted a complaint to the Office of Inspector General for the Department of Health and Human Services. Wrote sections of a comment on proposed changes to Section 1557 of the ACA focused on the impact of the proposed regulatory change on women and the LGBTQ+ community. Developed policy and advocacy materials on the Women's Health Protection Act.

**National Institute for Reproductive Health, New York, NY**

January-May 2019

*Legal Intern*

Completed the internship through Penn Law's Legislative Clinic. Researched and wrote memoranda on state constitutional protections for abortion. Drafted state legislation on access to reproductive healthcare. Tracked pending legislation and conducted policy analysis of bills affecting reproductive rights on the state and federal level.

**University of Pennsylvania Law School, Philadelphia, PA**

November 2018-May 2019

*Research Assistant for Law & Psychology Professor Tess Wilkinson-Ryan*

Conducted research for and edited a book chapter on moral decision-making in the fiduciary relationship.

**Penn Law Civil Rights Law Project, Philadelphia, PA**

September 2018-May 2020

*Research Editor (Sept. 2018-May 2019); Co-Director (June 2019-May 2020)*

Conducted research, drafted, and line-edited memoranda for the ACLU and NAACP Legal Defense Fund in support of impact litigation cases on school desegregation and housing discrimination. Oversaw the work of 35 research volunteers and managed relationships with national civil rights organizations.

**Women's Law Project, Philadelphia, PA**

August-December 2018

*Legal Intern*

Helped draft a motion to dismiss for a sex discrimination case. Conducted research for amicus briefs on sexual violence in custodial settings and on standby counsel in sexual assault cases. Observed oral argument in two Third Circuit cases. Tracked pending legislation and drafted policy analysis of state bills on workplace equity.

**Philadelphia Legal Assistance, Philadelphia, PA**

June 2018-January 2020

*Public Benefits Intern (June-Aug. 2018); Employment Advocacy Project Volunteer (Sept. 2018-Jan. 2020)*

Represented low-wage workers in administrative hearings on unemployment compensation matters, interviewed clients, and developed case strategies. Researched and drafted appellate briefs on the due process rights of workers in hearings. Continued to write appellate briefs and represent clients in hearings during my 2L and 3L years through the Employment Advocacy Pro Bono Project.

**Penn Law If/When/How: Lawyering for Reproductive Justice**

September 2017-May 2020

*Director*

Created an ongoing pro bono project where volunteers research and draft comments on proposed rules impacting civil and human rights. Managed and trained 70 volunteers providing pro bono assistance to people seeking access to health care.

**Swarthmore College Writing Associates Fellowship, Swarthmore, PA**

September 2014-May 2017

*Recipient*

Individually mentored a class of twenty students each semester on their writing and presentation skills.

**LANGUAGES & INTERESTS**

Working proficiency in French; Listening to podcasts, baking, and musical theater

**Sabrina Merold**  
**University of Pennsylvania Law School**  
**Cumulative GPA: Penn Law does not provide GPA information.**

**Fall 2017**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	Professor Tess Wilkinson-Ryan	A-	4.00	
Legal Practice Skills Cohort	Danielle Sekerak	CR	0.00	
Legal Practice Skills	Professor Alison Kehner	H	4.00	
Torts	Professor Eric Feldman	B+	4.00	
Civil Procedure	Professor Stephen Burbank	B+	4.00	

**Spring 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Professor Sophia Lee	B+	3.00	
Reproductive Rights and Justice	Professor Dorothy Roberts	A+	3.00	
Criminal Law	Professor Paul Robinson	B	4.00	
Legal Practice Skills Cohort	Danielle Sekerak	CR	0.00	
Legal Practice Skills	Professor Alison Kehner	H	2.00	
Constitutional Law	Professor Maggie Blackhawk	B	4.00	

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Study (Journal of Law and Social Change)		CR	1.00	
Appellate Advocacy	Professor Brett Sweitzer	A-	3.00	
Church & State in America: Contemporary & Historical Perspectives	Professor Sarah Barringer Gordon	A	3.00	
Journal of Law and Social Change - Associate Editor		CR	1.00	
Employment Discrimination	Professor Serena Mayeri	A	3.00	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legislative Clinic	Professor Lou Rulli	A	6.00	



Independent Study	Professor Dorothy Roberts	A	1.00
Black Lives Matter in Historical Perspective	Professor Sophia Lee	A-	3.00
Professional Responsibility in Public Interest Practice	Professor Miriam Enriquez	A	2.00
Journal of Law and Social Change - Associate Editor		CR	0.00
Federal Courts	Professor Catherine Struve	A-	4.00

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Criminal Procedure	Professor David Rudovsky	A-	3.00	
Journal of Law and Social Change - Executive Editor		CR	0.00	
Interdisciplinary Child Advocacy Clinic	Professor Kara Finck	A-	7.00	
Interdisciplinary Perspectives on Law and Family	Professor Serena Mayeri	A	3.00	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Power & Privilege in Public Service	Professor Neta Borshansky	CR	3.00	
Advanced Legislative Clinic	Professor Lou Rulli	CR	6.00	
Advanced Child Advocacy Clinic	Professor Kara Finck	CR	1.00	
Evidence	Professors David Rudovsky and Michael Levy	CR	4.00	
Labor Law	Professor Sean Burke	CR	2.00	

In light of the COVID-19 pandemic, Penn Law adopted a mandatory Credit/Fail grading policy for Spring 2020.

**Grading System Description**

Apart from the grades of A+ and F, the grades to be awarded in typical circumstances in moderate- to large-sized upper-level classes shall approximate the following distribution: the top 15% in the A category (including the grades of A+), the next 20% in the A- category, followed by 27.5% in the B+ category, 32.5-37.5% in the B category, and 0-5% in the B- category (including the grades of C and F).

The grade of A+ is reserved for students whose performance reveals an extraordinary measure of mastery of the course materials, outstanding creativity and sophistication in legal analysis, and an overall ability setting the student apart from the best papers in the A category. In many courses, no A+ grade is awarded; in a class of typical size, there may be one or two.

The 1L Legal Practice Skills course is graded on an honors/pass/fail basis. For the classes of 2013 on, it has been awarded to up to 30% of the class.

A course or co-curricular program which does not lend itself to the alphabetic system may be graded simply as Credit, Fail or Fail-No Credit (abbreviated CR, F and FNC).

**Sabrina Merold**  
**Swarthmore College**  
**Cumulative GPA: 3.98/4.00**

**Fall 2013**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Cellular & Molecular Biology	Professor Elizabeth Vallen	CR	1.00	
Security and Defense	Professor George Lakey	CR	1.00	
First Year Seminar: Picasso	Professor Constance Hungerford	CR	1.00	
Culture, Health, Illness	Professor Christy Schuetze	CR	1.00	

**Spring 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Cognitive Science	Professor Daniel Grodner	A	1.00	
Statistical Methods	Professor Scott Cook	A-	1.00	
Introduction to Psychology	Professor Andrew Ward	A	1.00	
First Year Seminar: Introduction to Education	Professor Sarah Costelloe	A	1.00	

**Fall 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to Anthropology & Sociology	Professor Sarah Willie-LeBreton	A	1.00	
Research: Design and Analysis	Professor Jodie Baird	A	1.00	
Thinking, Judgment, and Decision Making	Professor Barry Schwartz	A	1.00	
Writing Pedagogy	Professor Jill Gladstein	CR	1.00	

**Spring 2015**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Comparative Perspectives on the Body Honors Seminar Attachment	Professor Farha Ghannam	A	1.00	
Independent Research	Professor Daniel Grodner	A	1.00	
Comparative Perspectives on the Body	Professor Farha Ghannam	A	1.00	
Methods of Social Exploration	Professor Michael Reay	A	1.00	

Advanced French	Professor Jean-Vincent Blanchard	CR	1.00	
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#### Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Study Project	Professor Alexandre Lambert	A	1.00	
Perspectives on Global Health	Professor Heikki Mattila	A	0.75	
Research Methods & Ethics	Professor Heikki Mattila	A	0.75	
Development Policy & Health	Professor Heikki Mattila	A	0.75	
Intermediate French II	Professor Alexandre Lambert	A	0.75	

Studied abroad in the Fall of 2015 through SIT Global Health, Development, and Policy in Switzerland and Morocco. For my Independent Study Project, I researched and published a paper entitled "Tracing the Human Right from Law to Policy to Reproductive Healthcare: Exploring the Strengths and Shortcomings of Undocumented Migrant Women's Access to Reproductive Healthcare in Switzerland."

#### Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Independent Research	Professor Daniel Grodner	A	1.00	
Humanitarianism: Anthropological Approaches	Professor Sa'ed Atshan	A	2.00	
Ethnic Politics	Professor Mark Schneider	CR	1.00	
Geographic Information System for Public Health	Professor Ganapathy Narayanaraj	A	1.00	

#### Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Thesis Writers Master Class	Professor Farha Ghannam	S	0.00	
Independent Study	Professor Christy Schuetze	W	1.00	
Psychology of Language	Professor Daniel Grodner	A	1.00	
Senior Honors Thesis	Professor Farha Ghannam	A	1.00	
Research Practicum: Language & Mind	Professor Daniel Grodner	A	1.00	

#### Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Senior Honors Thesis	Professor Farha Ghannam	A	1.00
Seminar: Psycholinguistics	Professor Daniel Grodner	A	1.00
Anthropology of Biomedicine	Professor Christy Schuetze	A-	2.00

Awarded Phi Beta Kappa; Graduated with High Honors; Senior Sociology Thesis Awarded High Honors.

### Grading System Description

#### Credit/No Credit Grading

Since 1968, by College policy, all first year first semester courses receive only Credit/No Credit (CR/NC) grading. After the first semester, students may elect to take up to four more courses graded on the CR/NC basis. Since Fall 2018, in mandatory first semester CR/NC courses, D minus or better is required for CR credit, and in the four more optionally elected CR/NC courses, C minus or better is required for CR credit while any D minus, D or D plus grade shows on the transcript. From Fall 1968 to Spring 2018, for first-year students and sophomores, straight D or better work was required for CR credit in CR/NC courses; for juniors and seniors, straight C or better work was required for CR credit.

#### Grades

A+, A, A-, excellent; B+, B, B-, good; C+, C satisfactory; C-, D+, D, D-, passing, but below the average required for graduation; CR, credit, no specific grade assigned; NC, no credit (work unsatisfactory or uncompleted); NR, grade not reported; IP, work in progress; INC, incomplete; R, audit, no credit; S, requirement satisfactorily fulfilled; W, withdrawn; X, conditioned. From 1997 to 1999, the senior honors study course was graded H, honors; HH high honors; or HHH, highest honors. Prior to 1997, a single asterisk \*\* indicated ungraded credits earned for honors work; students who earned honors did so because this work was very good to excellent. Prior to Spring 1973, plus and minus were not used. Prior to Fall 1971: P, passed; E, failed. Grades followed by an asterisk indicate that the letter or numeric grade was earned elsewhere.

#### Credit for Work Done Elsewhere

Credit for work done elsewhere has been awarded by Swarthmore faculty in the department or program within whose discipline the work was completed. In most cases, credit is based on work submitted by the student.

#### Honors Notations

The Honors program: Since 1923, Swarthmore College has awarded three levels of honors: Honors, High Honors, and Highest Honors; the level of honors being determined at the end of the senior year by external examiners using their own written and oral Honors examinations of the students. Since 1997, honors candidates prepare 8 credits of honors work, which is graded.



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WWW.PHILALEGAL.ORG

June 10, 2020

Dear Judge:

I am pleased to provide a letter of recommendation on behalf of Sabrina Merold. Sabrina was an intern in the Public Benefits Unit, now the Unemployment Compensation Unit, at Philadelphia Legal Assistance during the summer of 2018. She has also continued her work with my unit throughout her time at law school. Philadelphia Legal Assistance (“PLA”) is the federally funded civil legal aid provider for Philadelphia’s indigent community. We provide high volume, high quality legal services through advice, *pro se* assistance, and full representation in areas of basic human needs: family safety; health; income maintenance; and home preservation. During the course of her work, Sabrina has handled her own client case load and assisted unit attorneys with legal research, writing, and investigation. Sabrina’s diligent and thoughtful work helped her clients retain stability during times of major life crisis.

As the Supervising Attorney of the Unemployment Compensation Unit, I trained Sabrina and assigned her a wide variety of cases and challenging legal tasks. I can confidently say she handled each one with a level of maturity and sophistication well beyond her years. During her time at PLA, Sabrina’s primary responsibility was to represent low-wage workers in unemployment compensation cases. These cases typically involved two stages: (1) administrative hearings and (2) written appeals to an agency review board. In advance of the administrative hearings, Sabrina had to investigate cases, synthesize facts, craft legal strategy, and prepare her clients for court. Her work involved distinguishing between the relevant, and often dispositive, facts of a client’s case and what was often a watershed of personal employment experiences. In the hearings, Sabrina sharpened her oral advocacy skills by learning how to direct her clients and cross-examine numerous employer witnesses, often with little notice of who would be testifying on behalf of the employer. As part of her training, Sabrina learned the basics of the Rules of Evidence and then used them in her hearings to present, and protect, her clients’ cases in an effective manner.

Sabrina drafted and filed several appeals to the Unemployment Compensation Board of Review during her summer internship, as well as during the 2018-2019 and 2019-2020 school years. These briefs required the development of a persuasive narrative paired with a keen analytical approach that could catch the attention of an overloaded agency review board. Throughout the summer she improved her ability to clearly and concisely construct her argument, both in her conversation with supervisors and in her appeal briefs. As a result of her excellent briefs, the agency review board overturned the hearing officer and granted benefits to several of Sabrina’s clients.

Page 2 of 2

In addition to researching and writing her own briefs, Sabrina completed several research memos to assist with my state appellate litigation. She demonstrated a quick understanding of the legal questions presented and provided in-depth, and at times innovative, research memos. During this research, Sabrina respectfully engaged in legal strategy conversations with supervisors and took direction and critical feedback with a high level of professionalism. She knew when to ask questions and when, importantly, she could figure out answers on her own. Sabrina also always completed her work in a timely manner and never missed a deadline.

I have supervised over 80 law students during my time at PLA. Sabrina's legal reasoning and written work is some of the strongest I have seen from a law student. Not only is her legal work product well-written and organized, but her attention to detail and synthesis of complex questions of law is superb. Her clear thinking and concise writing style rivals that of many lawyers with whom I work. Throughout her involvement with PLA, Sabrina was self-motivated, demonstrated strong communications skills, and showed impressive legal acumen.

Sabrina, in addition to being a fantastic advocate and intellectually sophisticated researcher, is also a wonderful person. She has a kind and caring demeanor that shined through her interactions with clients and also brought a sense of comfort to everyone that worked with her. Sabrina has a high level of enthusiasm for her work and cares deeply about helping at-risk populations. She quickly developed a positive working relationship with her co-intern that remained strong throughout the summer. Towards the end of her internship, we on-boarded a new paralegal in our unit and Sabrina immediately made him feel welcome and helped him adjust to his new position.

It has been a great pleasure working with Sabrina. I regret that we did not have the resources to hire her right out of law school, as I cannot imagine a law student better equipped to hit the ground running. I am sure that her experience next year as a fellow working on federal litigation will only further prepare her for a clerkship in your chambers. I have no doubt that she has a bright legal future ahead of her.

As a former law clerk in the Eastern District of Pennsylvania, I know that Sabrina has the analytical, interpersonal, and organizational skills to make her an excellent candidate for a clerkship in your chambers. I believe that Sabrina would only continue to grow and improve during a clerkship under your honor's mentorship. I am pleased to strongly recommend Sabrina for a judicial clerkship. If you have any questions or require additional information, please contact me at (267) 437-7552.

Respectfully,



Julia Simon-Mishel  
Supervising Attorney

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

April 18, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Re: Clerkship Applicant Sabrina Merold

Dear Judge Hanes:

It is with the greatest enthusiasm that I write to recommend Sabrina Merold for a clerkship in your chambers. She already has launched a distinguished career in public interest law and has won awards and fellowships recognizing her ability and promise. Ms. Merold's prodigious intellect, talent for research and writing, work ethic, and dedication are the qualities of an excellent law clerk. Her warmth, kindness, open-mindedness, and professionalism make working with Sabrina a pleasure.

I came to know Ms. Merold when she enrolled in my Employment Discrimination course in the Fall of 2018. Throughout the semester, her thoughtful engagement with the course material was evident; she consistently came to class prepared and asked probing questions about the material. Grades in my course are based almost entirely upon an anonymously graded, two-part, 24-hour takeaway examination. The first part of the exam is a complicated fact pattern that requires students to identify and analyze legal claims, and to make compliance recommendations to a hypothetical employer. The second is a more open-ended essay question that invites students to make descriptive and normative judgments about the field of employment discrimination law.

Ms. Merold's performance on both parts of the exam was excellent. She is a superb writer, with a succinct, sophisticated yet accessible style. Substantively, her answers demonstrated mastery of the material as well as an ability to think creatively and deeply about questions of law and policy. Among an unusually capable group of students, Ms. Merold received the highest score on the second part of the exam, and the second highest exam grade overall. She easily earned an A in the course.

I was delighted when Ms. Merold subsequently enrolled in my seminar, Interdisciplinary Perspectives on Law and the Family, in the fall of 2019. The seminar entails a demanding workload that includes responses to 100-150 pages of weekly readings, active participation in class discussions, and a substantial final research paper. Ms. Merold excelled along each of these dimensions. Her response papers and discussion questions demonstrated a deep understanding of the material and an ability to digest and evaluate sources from disciplines including sociology, history, political science, anthropology, and economics as well as law. She contributed insightful comments to our discussions, and invariably came to class impeccably prepared despite her heavy academic and co-curricular workload. Ms. Merold wrote an excellent paper for her final project, investigating parental involvement laws for minors who consider terminating a pregnancy. The project requires extensive research into state and federal law, and Ms. Merold's meticulously sourced and beautifully written paper easily earned an A.

Ms. Merold's research and writing skills have received recognition and accolades. She graduated from Swarthmore College with High Honors, and earned Honors in her 1L research and writing course. She serves as a research assistant for Professor Tess Wilkinson-Ryan, investigating behavioral economics and the psychology of trust. Professor Sarah Barringer Gordon has selected her to be a Research Assistant and a Teaching Assistant for her rigorous course on Church and State, based on Ms. Merold's excellent performance in her seminar. Her co-curricular activities have also allowed her to hone her research and writing abilities. As a research editor for the Civil Rights Law Project, she has conducted research for the NAACP Legal Defense Fund and for the ACLU, and overseen the research and writing of other student volunteers.

Ms. Merold has already gained a wealth of experience representing clients in administrative hearings and participating in various aspects of the litigation process. As an intern representing low-income individuals with Philadelphia Legal Assistance, and as a volunteer with the Employment Advocacy Project, Sabrina has represented clients in unemployment compensation hearings, with supervision but largely on her own. She has developed case strategies, argued on behalf of clients, and conducted direct and cross-examination of witnesses. She has also researched and drafted appellate briefs on clients' behalf. Her experience with clients who experienced pregnancy-based discrimination led Sabrina to pursue an internship with the Women's Law Project, working on impact litigation concerning sex and gender discrimination in the workplace. She also has interned with the Lawyering Project, where she researched and drafted briefs in litigation challenging restrictions on reproductive rights.

Clinical work has exposed Ms. Merold to a wide range of law and policy matters. After a semester in the intensive and

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

demanding Interdisciplinary Child Advocacy Clinic, she continued her work on a Special Immigrant Juvenile Status case. She was the first student to enroll in the Advanced Legislative Clinic, and spent the spring of her 3L year interning for Senator Mazie Hirono on the Senate Judiciary Committee. Ms. Merold has also taken a leadership role in advocacy for reproductive health and justice on campus, and in state and federal organizations. She will spend her post-graduate year continuing her longtime work with the Center for Reproductive Rights on a Penn Law fellowship.

Ms. Merold's dedication to public interest law and to serving her community stands out even in a law school full of devoted and passionate students. To give just one example, for over a year, she met every other week with an incarcerated client to work on a pardon application, and her dedication was recognized with an Outstanding Volunteer Award from the Toll Public Interest Center. She has received recognition from the Philadelphia Bar Association for Exceptional Pro Bono Engagement. Ms. Merold is also a devoted institutional citizen, serving as fundraising chair for the Equal Justice Foundation, which raises money to fund students' summer public interest work.

Despite the astonishing range, depth, and magnitude of Ms. Merold's academic and co-curricular commitments, she performs at a first-rate level in every domain. In the two years I have known Sabrina, I have never seen her sacrifice quality for quantity. She rises to personal and professional challenges with grace and aplomb. She brings to her work a remarkable sensitivity and warmth that will serve her very well in interacting with colleagues and clients. She is engaging, kind, empathetic, humble, and open-minded—truly a pleasure to be around. In short, Sabrina Merold's application for a judicial clerkship has my strongest endorsement.

Thank you very much for your consideration. If I can provide any further information or assistance, please do not hesitate to contact me.

Sincerely,

Serena Mayeri  
Professor of Law and History  
Tel.: (215) 898-6728  
E-mail: smayeri@law.upenn.edu



**Sabrina Merold**

18 Sherbrooke Drive Florham Park, NJ 07932  
[smerold@pennlaw.upenn.edu](mailto:smerold@pennlaw.upenn.edu) | (973)-820-6303

**WRITING SAMPLE**

The attached writing sample is an appellate brief I drafted during my third-year as an Employment Advocacy Project Pro Bono Volunteer. The Employment Advocacy Project is supervised by Philadelphia Legal Assistance attorney Julia Simon-Mishel. The assignment was to write a brief to the Unemployment Compensation Board of Review challenging the Referee's Decision denying claimant unemployment compensation benefits based on a finding that the claimant voluntarily quit his job.

I performed all of the research and wrote the brief. I discussed legal argument strategy for the brief with Ms. Simon-Mishel, but I did not receive any edits on the brief. Ms. Simon-Mishel is one of my recommenders. She can be reached at (240)-476-8799 or [jsimonmishel@philalegal.org](mailto:jsimonmishel@philalegal.org).

To preserve client confidentiality, all individual names and locations have been changed. I am submitting the attached writing sample with the permission of Philadelphia Legal Assistance.

Unemployment Compensation Board of Review  
Room 1116, Labor & Industry Building  
651 Boas Street  
Harrisburg, PA 17121-0001

September 12, 2019

**Claimant:** Joe Smith<sup>1</sup>  
**Appeal:** 00-00-X-XX00

Dear Members of the Board:

I am a non-legal advocate representing Mr. Joe Smith. Please accept this letter as a brief in support of his appeal of the Referee's decision on December 28, 2018, finding him ineligible for benefits under Section 402(b).

This brief argues that Mr. Smith's due process rights were violated when his Referee hearing preceded without the Spanish-interpreter he had requested. As Mr. Smith was denied a full and fair hearing, the Board of Review should grant a remand hearing. Further, Mr. Smith voluntarily quit his job for necessitous and compelling health reasons. Therefore the Referee erred and misapplied the law in finding that Mr. Smith was ineligible for benefits under Section 402(b).

**I. Statement of Facts**

Mr. Smith had been a Maintenance Worker at Jay's Auto Group for four years when he had to voluntarily quit his job for health reasons on October 22, 2018. Transcript of Testimony at 4-5 (2018) [hereafter Trans.]. Mr. Smith is a Spanish speaker. Before the hearing, Mr. Smith requested a Spanish-interpreter and Accent Interpreting Service was included as an additional interested party on the Notice of Hearing. Notice of Hearing (December 3, 2018).

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<sup>1</sup> To protect client confidentiality, all names of individuals and organizations have been changed to aliases.

At the hearing, the Referee noted that “we have an interpreter here on the Notice, but there is no interpreter here. Did you need...”. Trans. at 2. Mr. Smith responded, “If not, I’ll ask for one.” *Id.* The Referee then attempted to verify with Mr. Smith “that we do not have an interpreter and that’s okay.” *Id.* Before receiving an answer from Mr. Smith, the Referee went right into explaining his rights under Unemployment Compensation Law and asked him, “Do you understand your rights, Mr. Smith?”. *Id.* Mr. Smith responded, “Yes.” *Id.*

Mr. Smith was not represented at the hearing by an attorney or a non-legal advocate. Throughout the hearing, Mr. Smith continued to respond before the Referee had fully asked a question. *Id.* at 3; 11-13. The Referee asked Mr. Smith, “Did you have an opportunity to review the...” to which Mr. Smith responded, “Yes.” *Id.* at 3. Mr. Smith responded before the Referee was able to say, “The files in the hearing file.” *Id.* When asked by the Referee whether the separation was a voluntary quit or a leave of absence, Mr. Smith continued to respond by saying, “I just couldn’t do the job.” *Id.* at 5. After repeatedly receiving the same answer, the Referee stated, “That’s not answering. It’s a really simple question. Why is October 22, 2018 your last day of work.” *Id.* To this question, Mr. Smith again responded, “I couldn’t work no more.” *Id.*

On July 17, 2018, Mr. Smith was instructed by his cardiologist to remain out of work for “at least the next 3 months” due to ongoing cardiac issues. Cardiology Doctor’s Note [hereafter Doctor’s Note]. While he was out of work on FMLA leave, claimant had heart surgery. Trans. at 8. Claimant also previously had three operations placing stents in his legs. *Id.* at 7. When Mr. Smith returned to work on October 10, 2018, the day after his FMLA leave ended, he was informed that his maintenance job had been eliminated and he was offered a valet position. *Id.* at 10-11. Mr. Smith received a doctor’s note to return back to his maintenance job without any restrictions and was informed by his doctor to “not be stupid. Like, over exaggerate myself.” *Id.*

Mr. Smith provided his employer with the doctor's note and went to work in the new valet position where he was doing a lot of walking and "getting in and out of the cars" in comparison to his old position where there was only "a little bit of walking." *Id.* at 8-10. After about a week, Mr. Smith realized he could not do the change in job duties because "my legs wouldn't let me" and he was having "chest pains." *Id.* at 5; 10; 12. According to Jay's Auto Group's Controller, Mr. Frank Scott, claimant could no longer do the work because "it would kill him." *Id.* at 6.

Mr. Smith informed his employer that he could not handle the valet job and stated that "[he] asked for light duty work" from Mr. Scott and his Project Manager, Mr. Mike Taylor. *Id.* at 5-6; 10-11; 14. Mr. Scott and Mr. Taylor told Mr. Smith that the valet job was the "only job we have available and it's the least demanding job that we have available" where claimant could be full-time. *Id.* at 14. After notifying his employer on October 22, 2018 that he could not do the job, he went home for the day and did not return back to work. *Id.* at 5; 14. According to Mr. Taylor, he informed Mr. Smith that if he could not do the job, he should get a doctor's note with his restrictions. *Id.* at 14. Mr. Taylor testified that he gave the claimant no time frame to get the doctor's note and never received a note from the claimant, which he took as claimant's resignation. *Id.*

When asked by the Referee "was there an understanding that you would get more information from your doctor on what you can and can't do?" claimant responded, "Never. He just – everything's in the file, his file." *Id.* at 15. The Referee tried to follow up with the claimant and asked, "So, did he ask you to..." but before the Referee could state what the question was about, the claimant responded, "Yes." *Id.* Mr. Smith also testified that Mr. Scott and Mr. Taylor informed him, "If you can't do the job, you should have no problem getting compensation." *Id.* at 5; 15.